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PART III:

INTERSTATE COMMERCE COMMISSION

■

REVISED RULES OF PRACTICE

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1100]

[Ex Parte No. 55 (Sub-No. 24)]

REVISED RULES OF PRACTICE

Proposed Rulemaking

● *Purpose:* The Commission herein proposes to revise its Rules of Practice in order to facilitate and expedite proceedings before it. ●

The Commission, pursuant to a recommendation by its Blue Ribbon Staff Panel in 1975, began an evaluation of its Rules of Practice with the aim of updating, clarifying, and improving them. Subsequently, the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210, 90 Stat. 31, charged the Commission with a duty to review and revise its Rules of Practice in the rail area within one year of the date of enactment.

Pursuant to its commitment resulting from the Blue Ribbon Panel's recommendation and its statutory duty, certain proposed revised Rules of Practice have been compiled which are designed to clarify and simplify our existing rules and make more efficient the procedures employed in proceedings before the Commission arising under the Interstate Commerce Act and related acts. Some of the significant modifications proposed in this rulemaking include the limiting of the use of interrogatories and requests for admissions to those circumstances in which depositions and production of documents are currently permitted, revision of the procedure regarding administrative appeals, and provisions for the substitution of oral argument in lieu of written briefs at the conclusion of hearings. These proposals, which upon approval by the entire Commission will require a renumbering of the Rules of Practice, are being proposed by the Commission's Committee on Rules.

The proposed action is not expected to affect significantly the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. No oral hearing is contemplated at this time, but anyone wishing to make representations in favor, or against the proposals may do so by the submission of written data, views, or arguments. An original and 15 copies (wherever possible) of such data, views or arguments shall be filed with this Commission on or before January 7, 1977. Such time should be sufficient for interested persons to obtain copies of the proposed rules and analyze the issues. No extensions of time are contemplated in light of the Commission's statutory deadline to complete this task.

Copies of the proposed rules are appended to this notice and will be available in the docket and upon written request to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. All written submissions will be available for public inspection during regular business hours at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, Washington, D.C.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission's Committee on Rules, Chairman Stafford, Vice Chairman Clapp, and Commissioners Murphy and Corber.

ROBERT L. OSWALD,
Secretary.

PRESENT RULE	PROPOSED RULE	COMMENT
	PART 1100--~~GENERAL~~ RULES OF PRACTICE	The proposed change in the title of Part 1100 from "GENERAL RULES OF PRACTICE" to "RULES OF PRACTICE" is warranted by the fact that Part 1100 is no longer limited to general rules, but embraces numerous and important special rules.
GENERAL INFORMATION		
§1100.1 Scope of rules. (Rule 1)	§1100.1 General information.	
The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act and related acts, unless otherwise directed by the Commission in any proceeding.	(a) Scope of rules. The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act, as amended, and related acts, except insofar as they may be inconsistent with and superseded by requirements governing the practice and procedure in specified categories of proceedings as set out in Parts 1101-1159,1/ or unless otherwise directed by the Commission in any proceeding.	The principal change proposed here consists of the insertion of a reference to the procedural requirements in 49 CFR 1101-1159. This change accomplishes a worthwhile objective by calling the public's attention to the existence of the special requirements in Parts 1101-1159, and by further advising that those special requirements will prevail in any instance where they conflict with the Rules of Practice in Part 1100. As a further service to the public, it is provided that an index to Parts 1101-1159 be set forth in Appendix E to the Rules of Practice.
	(b) Applicability. Subpart A of this part sets forth general rules applicable to all types of proceedings, except to the extent otherwise provided in subpart B hereof which sets forth special rules applicable to particular types of proceedings. Wherever there is any conflict between one of the rules of general applicability in subpart A and a special rule in subpart B, the special rule will govern.	This new rule sets up the Committee's proposed format for Part 1100, with the rules of general applicability being embraced in subpart A and the special rules in subpart B. Most important, this rule provides that whenever there is any conflict between the rules of general applicability in subpart A and a special rule in subpart B, the special rule will govern. It is the Committee's view that this provision will eliminate most, if not all, inconsistencies or conflicts in the present Rules of Practice.
	(c) Reference to and citation of rules. This part shall be referred to as the "Rules	This proposed new addition to the Commission's rules meets a long-standing need by clearly advising the public as to the proper method of citing particular rules.

1/ An index to parts 1101-1159 is set forth in Appendix E hereto.

PRESENT RULE	PROPOSED RULE	COMMENT
	of Practice." Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule." The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "§1100.63 Request for admission" shall be referred to as "Rule 63." Paragraph (b) of that rule, relating to "Effect of admission," shall be referred to as "Rule 63 (b)."	
§1100.2 Liberal construction. (Rule 2) The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.	§1100.2 Liberal construction. ~~(Rule 2)~~ The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.	No change is proposed in the actual content of this rule. It is set forth here in the "Proposed Rule" column solely for the purpose of calling attention to the fact that, by reason of Rule 1(c), it is no longer necessary to include the parenthetical citation in the title of the rule. Hereinafter, such parenthetical citations in the titles will be omitted in both columns.
	§1100.3 Information; special instructions. Information as to procedure under the rules in this part, and instructions supplementing these rules in special instances, will be furnished upon application to the Secretary of the Commission, Washington, D.C. 20423.	The only change proposed in the present rule consists in the addition of the zip code to facilitate mailings to the Secretary.
	SUBPART A - RULES OF GENERAL APPLICABILITY	In line with the provisions of proposed Rule 1(b), this new title is necessitated to set off the rules of general applicability. At a later point, another new title, "SUBPART B - SPECIAL RULES," will be included to set off the special rules.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.4 Communications and pleadings generally.		
(a) How addressed. All communications, including correspondence concerning matters referred to boards, should be addressed to the Commission unless otherwise specifically directed. All communications should clearly designate the docket number, if any, and short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.	No change.	
(b) Timely filing required. Pleadings, requests,or other papers or documents required or permitted to be filed under this part must be received for filing at the Commission's offices at Washington, D.C., within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative.	No change.	It should be noted that consideration has been accorded to the views submitted by several parties requesting amendment of Rule 4(b) so as to provide that pleadings be considered timely filed (a) if certified as having been deposited in the mail as late as the due date and actually received at the Commission no later than 5 days after the due date, or (b) if filed by the due date at a field office of the Commission. Although sympathetic to the proposal in (a) above, the Committee determined that no amendment be made for the reasons (1) that the Commission just recently denied such relief, and (2) that such action undoubtedly would serve to add to so-called "administrative lag."
(c) Disposition of; when defective. In any proceeding when upon inspection the Commission is of the opinion that a pleading, document, or paper tendered for filing does not comply with this part or, if it be an application, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the pleading, document, or paper for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.	No change.	
(d) Objectionable matter. The Commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, document, or paper filed with it.	No change.	
(e) Ex parte communications prohibited; penalties provided. Ex parte communications as defined in Appendix C to this part are prohibited and any person violating the prohibitions set out in such Appendix is subject to the penalties as therein provided.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.5 Definitions. ~~(Rule 5)~~		
As used in this part: (a) The terms "act" and "part" mean the Interstate Commerce Act and the several parts thereof, respectively. The term "act" also means, unless the context otherwise indicates, any other statute which the Commission administers in whole or in part. NOTE: References to parts designated by Roman numerals refer to the Interstate Commerce Act. References to "this part," the rules in this part or to parts designated by Arabic numerals, refer to this Code.	No change.	
	(b) The term "proceeding" shall include: (1) a n "informal ~~or formal~~ complaint" filed under Rule 24 or 25 or a "formal complaint" alleging violation of any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, including petitions on the special docket; (2) an "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, or (ii) the consideration of any submission required by law to be made to the Commission; ~~and~~ (3) an "investigation" instituted by the Commission; ~~including, among other, matters on the valuation and investigation and suspension dockets;~~ and (4) a "rulemaking" proposal instituted by the Commission.	The proposed amendment deletes from the definition of "investigation" the language "including, among other, matters on the valuation and investigation and suspension dockets" as unnecessarily redundant, adds, at (4), "a 'rulemaking' proposal instituted by the Commission."
	(c) The term "complainant" means a person filing a complaint; "defendant" means a ~~carrier or other~~ person against whom complaint is filed; "applicant" means a person filing an application; "respondent" means a person designated in an investigation; "protestant" means a person opposed to the granting of an application, to any tariff or schedule becoming effective, or to a tentative valuation; "intervener" means a person permitted to intervene as provided in Rule 72 or 73, and "petitioner" means any other person seeking relief otherwise than by complaint, protest or application.	The proposed amendment makes only minor editorial changes, including adding to the definition of "intervener" those persons permitted to participate in a proceeding pursuant to Rule 73.
	(d) The term "party" shall include all named in paragraph (c) above, or others, permitted or directed by the Commission to participate in a proceeding. It shall not include persons signing certificates of support or witnesses appearing at an oral hearing or submitting verified statements under modified procedure unless such persons are included in the preceding provisions of this Rule, and shall not include persons named in the docket service list merely for the purpose of receiving copies of Commission releases.	The proposed new Rule 5(d) defining the term "party" fills a long-standing void in the Commission's rules. The need for this definition has become more critical since the fairly recent promulgation of the discovery rules wherein the definition of the term "party" has particular relevance. Former subsection (d) becomes new proposed subsection (e).

PRESENT	PROPOSED RULE	COMMENT
	~~(d)~~ (e) The term "pleading" means a complaint, answer, reply, application, protest, motion (other than motion orally made at hearing or argument), brief, exceptions, petition, document supplementing oral hearing as described in Rule 86 and all documents filed under modified procedure.	Proposed Rule 5(e) expands the definition of "pleading" as it appears at present Rule 5(d) to include briefs and exceptions.
	~~(e)~~ (f) The term "practitioner" means a person authorized by the Commission to appear before it in a representative capacity.	Proposed Rule 5(f) embodies present Rule 5(e) without change.
	~~(f)~~ (g) The term "officer," except as a different meaning is indicated in Rules 17(b), 57 to 66, inclusive, 71(a) and 78 (civil and corporate functionaries), includes ~~(1)~~ a Division, Commissioner, administrative law judge, board of employees (called an "employee board" in this part), an examiner or special board composed of State representatives (called a "joint board" in this part), to which a proceeding (called "referred matter" in this part) is ~~by order~~ assigned or referred for hearing, consideration, or recommendation of an appropriate order thereon pursuant to provision of law, ~~and (2) a Commissioner, an examiner, or other Commission employee before whom without entry of an order of reference, a proceeding is assigned for hearing.~~ The term "board" means either an employee board or a joint board as the context requires. ~~[1] Such as sections 17 and 205 of the Interstate Commerce Act.~~	Proposed Rule 5(g) expands the definition of "officer" to include Division and administrative law judge.
(g) The term "proposed report" means an officer's written statement of the issues, the facts, and the findings the officer proposes that the Commission should make, with the reasons therefor, but with no recommended order. Such term also means, and shall include, a "recommended decision" and a "tentative decision" as these last two terms are used in the Administrative Procedure Act.	Deleted.	Present Rule 5(g) is to be replaced by Rule 5(i).
(h) The term "report and recommended order" means an officer's written statement in a referred matter of the issues, the facts, the findings, reasons for such findings, and a recommended order. Such term also means, and shall include, an "initial decision" as the latter term is used in the Administrative Procedure Act.	(h) The term "initial decision" means an officer's statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and an appropriate order. An initial decision made by a Commissioner, an administrative law judge or a joint board will become effective as the order of the Commission in the circumstances described in Rule 95(b).	Proposed Rule 5(h) would replace present Rule 5(h) by modifying and updating the contents of the latter in line with present official terminology and Commission practice.

PRESENT	PROPOSED RULE	COMMENT
(i) The term "officer's report" or "board's report" means a proposed report or report and recommended order.	Deleted.	Rule 5(i) is outdated and serves no useful purpose.
	(i) The term "tentative decision" means a decision proposed by the Commission, which shall embrace the same elements specified for inclusion in initial decisions. A tentative decision will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertainable error the statement therein of the issues and facts ordinarily will be taken by the Commission as the basis of its subsequent decision.	Proposed Rule 5(i) replaces present Rule 5(g).
(j) The term "modified procedure" means the procedure specified in Rules 45 to 54, inclusive, which rules provide for the filing and serving of pleadings in proceedings with a view to limiting the matters upon which subsequent oral evidence, if any, will be introduced.	No change.	
	(k) The term "transcript" ~~shall include~~ means a written or electronically recorded statement of all proceedings at an oral hearing.	Proposed Rule 5(k) is essentially the same as the present Rule 5(k) with a minor editorial change.
	§1100.6 Use of gender and number. ~~(Rule 6)~~ Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender include the feminine. ~~may be applied to females~~.	The revision to proposed Rule 6 is editorial in nature.
PRACTITIONERS		
§1100.7 Register of practitioners. ~~(Rule 7)~~ A register is maintained by the Commission in which are entered the names of all persons entitled to practice before the Commission. Corporations and firms will not be admitted or recognized.	No change.	

PRESENT	PROPOSED RULE	COMMENT
	§1100.8 Attorneys at Law - Qualifications and requirements for practice before the Commission.	Changes title of Rule and deletes preamble.
	Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia may represent others before the Commission upon filing with the Commission a written declaration so stating that he is currently qualified. The written declaration shall contain the declarant's full name, address, and telephone number. A declaration may be filed with the Secretary of the Commission in the form as shown in Appendix D to this part, in which event the attorney's name will be entered in the Register of Attorneys at Law. Attorneys may also file declarations with the Secretary or a Hearing Officer when making an initial appearance in any proceeding and the Attorney's name will be entered in the Register of Attorneys at Law. Once an attorney's name is entered in the Register of Attorneys at Law no further declaration of qualification will be required except in those instances where an attorney's right to practice has been suspended, in which event a written declaration will be required that he is now properly qualified in accordance with this paragraph.	
(b) Persons not attorneys. Any person not an attorney at law who is a citizen or resident of the United States and who shall satisfy the Commission that he is possessed of the necessary legal and technical qualifications to enable him to render valuable service before the Commission, and that he is otherwise competent to advise and assist in the presentation of matters before the Commission.	Deletion proposed from Rule 8.	Rule 8(b) now appears as Rule 9, with changes.
(c) Appearances. Practitioners who meet the requirements set forth in paragraphs (a) and (b) of this section shall also file a declaration that they are authorized to represent the particular party in whose behalf they propose to act at the time of making an initial appearance in any proceeding. This requirement will be met by the practitioner entering his name as the representative of an applicant in the appropriate space on an application form; by signing any complaint, petition, protest, reply, or other pleading with a designation following the practitioner's signature that	Deletion proposed from Rule 8.	Rule 8(c) now appears as proposed Rule 10.

PRESENT	PROPOSED RULE	COMMENT
he is the attorney or other representative of a party therein named; by entering an appearance on the form provided at any hearing; or by filing a letter with the Secretary of the Commission stating that he is authorized to represent a party, whose name and address is given in a particular proceeding which shall be identified.		
§1100.9 Nonattorneys' applications for admission to practice. ~~(Rule 9)~~ An application under oath for admission to practice shall be addressed to the Commission, Washington, D. C. 20423, and must state the name, residence address, and business address of the applicant, and the nature of his qualifications. Such application shall also state whether the applicant has ever been suspended or disbarred as an attorney, or whether his right to practice has ever been revoked by any court, commission, or administrative agency, in any jurisdiction. Such application shall be accompanied by a certificate signed by three or more practitioners as sponsors for the applicant, which certificate shall recite that applicant possesses all the requisite qualifications under this section and under Rule 8(b), and the sponsors shall incorporate in their certificate a recommendation and motion that applicant be admitted to practice under this section. [32 F.R. 20778, Dec. 23, 1967]	§1100.9 Persons not attorneys at law - qualifications and requirements for practice before the Commission. (a) In general. Any citizen or resident of the United States, not an attorney at law, who shall file an application for admission to practice, accompanied by payment of the fee prescribed by rule or order of the Commission, successfully complete the practitioners' examination, and show that he possesses the necessary legal and technical qualifications to enable him to render valuable service before the Commission and that he is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.	This section of proposed new Rule 9(a) incorporates present Rule 8(b). Note changes such as "resident."
	(b) Application for admission. An application filed pursuant to this rule under oath for admission to practice shall be completed in full on the form provided by the Commission, and shall be addressed to the Secretary of the Commission, Washington, D.C. 20423.	This section of proposed new Rule 9(b) incorporates present Rule 9, with unnecessary provisions being deleted.
	(c) Additional certificates by applicant's sponsors; hearing on application; abandonment of application. The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of his qualifications. Upon consideration thereof, if the Commission is not satisfied as to the adequacy of applicant's qualifications, he will be notified thereof by registered mail, whereupon he may request a hearing to prove his qualifications. If he presents such a request, the Commission will accord him a hearing. In the absence of a request for hearing within 20 days from receipt of said notice, his application shall be considered as withdrawn.	Proposed new Rule 9(c) incorporates present Rule 10. (Note changes).
	(d) Application fee. Each application filed pursuant to this rule must be accompanied by a non-refundable fee of $50. Payment must be made either in cash, or by check or money order payable to the Interstate Commerce Commission.	This section of proposed new Rule 9(d) incorporates present Rule 11. The filing fee has been increased to $50, consistent with the lowest bar application (District of Columbia). (Note the "nonrefundable" provision which also is a substantial change from present Rule 11).

PRESENT	PROPOSED RULE	COMMENT
	(e) Failure to appear for examination. Except for good cause shown, if an applicant fails to appear at the time and place indicated by the Commission to take the practitioners' examination, the application shall be considered withdrawn.	
	(f) Applicant's oath. No applicant shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will demean himself, as a practitioner before the Commission, uprightly, and according to law; and that he will support the Constitution of the United States and laws of the United States andwill conform to the rules and regulations of the Commission.	This section of proposed new Rule 9(f) incorporates present Rule 12.
§1100.10 Additional certificates by applicant's sponsors; hearing; abandonment of application. ~~(Rule 10)~~ The Commission in its discretion may call upon the practitioners making such certificate for a full statement of the nature and extent of their knowledge of the qualifications of the applicant. If upon consideration of the papers filed by the applicant and the statements submitted by his sponsors, or otherwise, the Commission is not satisfied as to the sufficiency of the applicant's qualifications under these rules, it will so notify him by registered mail, whereupon he may request a hearing for the purpose of showing his qualifications. If he presents such requests, the Commission will accord him a hearing. If he presents to the Commission no request for such hearing within 20 days after receiving the notification above referred to, his application shall be deemed to be withdrawn. /32 FR 20066, Dec. 20, 1967, as amended at 32 FR 20778, Dec. 23, 1967/		This section now appears as proposed Rule 9(c).
§1100.11 Application fee. ~~(Rule 11)~~ An application filed under Rule 9 must be accompanied by a fee of $25. Payment must be made either in cash, or by check, or money order payable to the Interstate Commerce Commission. The fee will be returned if applicant is not admitted to practice. /33 FR 7821, May 29, 1968/		This section now appears as proposed Rule 9(d).

PRESENT	PROPOSED RULE	COMMENT
§1100.12 Applicant's oath ~~(Rule 12)~~. No applicant under Rule 9 shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will demean himself, as a practitioner before the Commission, uprightly, and according to law; and that he will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission. [32 F.R. 20778, Dec. 23, 1967]		This section now appears as proposed Rule 9(f).
	§1100.10 Initial appearances. Practitioners shall file a declaration that they are authorized to represent the particular party in whose behalf they propose to act at the time of making an initial appearance in any proceeding. This requirement will be met by the practitioner entering his name as the representative of an applicant in the appropriate space on an application form; by signing any complaint, petition, protest, reply, or other pleading with a designation following the practitioner's signature that he is the attorney for or other representative of a party therein named; by entering an appearance on the form provided at any hearing; or by filing a letter with the Secretary of the Commission stating that he is authorized to represent a party, whose name and address is given in a particular proceeding which shall be identified. For additional information on appearances, see Rule 71.	This proposed section incorporates present section 8(c) with minor editorial changes.
§1100.13 Denial of admission, censure, suspension, or disbarment of practitioners. ~~(Rule 13)~~ The Commission may, in its discretion, deny admission, censure, suspend, or disbar any person not an attorney who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or proper professional conduct. All persons whether or not admitted to practice under Rule 8 or 9, must, in their representations before the Commission conform to the code of ethics for Practitioners, which code is set forth as	§1100.11 Suspension, disbarment, or other disciplinary action. When it is shown to the Commission that any member of its bar has been suspended or disbarred from practice in any court of record, or has violated any of the Commission's rules, including the code of ethics as set out in Appendix A, or has engaged in other conduct unbecoming a member of the bar of the Commission, he will be subject to suspension, disbarment, or other disciplinary action by the Commission. The member shall be afforded an	This proposed section makes only editorial changes in present Rule 13.

PRESENT	PROPOSED RULE	COMMENT
Appendix A to this part. If for good cause shown, the Commission shall be of the opinion that any attorney is not conforming to such standards, or that he has been otherwise guilty of conduct warranting disciplinary action the Commission may issue an order requiring such attorney to show cause why he should not be suspended or denied the right to practice before the Commission. If such attorney shall fail to show good cause why he should not be suspended or denied the right to practice, he may be censured, suspended, or disbarred. Any person who has been admitted to practice may be suspended or disbarred only after he is afforded an opportunity to be heard. [32 FR 20778, Dec. 23, 1967]	opportunity to show good cause, within such time as the Commission shall prescribe, why he should not be suspended, disbarred or otherwise disciplined. Upon his response to the order to show cause, and after hearing, if requested, or upon failure to respond within the time prescribed for a response, the Commission shall issue an appropriate order.	
	§1100.12	Omitted.
	§1100.13	Omitted.
SPECIAL RULES RESPECTING BOARDS	JOINT BOARDS	
§1100.14 Special rules respecting boards. ~~(Rule 14)~~	1100.14 Joint board organization and procedures.	Change in title only.
(a) Organization. After a joint board has been created it shall select one of its members to act as chairman for all purposes concerning matters which may be referred to it. In the event the member so selected is absent from any meeting of the joint board the members attending shall select one of such members, except as provided in paragraph (b) of this section, temporarily to act as chairman.	(a) No change.	
(b) Waiver by absence of a joint board member. The failure of a duly appointed member of a joint board to participate in any hearing after notice thereof on a matter referred to such joint board shall be considered to constitute, as to the matter referred, a waiver of action on the part of the State from which such member was appointed.	(b) No change.	

PRESENT	PROPOSED RULE	COMMENT
(c) Procedural rulings in case of disagreement. If the members of a board or a majority thereof in actual attendance at a hearing shall be unable to agree upon the disposition of a procedural question arising therein, the chairman (or acting chairman) of the board shall decide the question and rule or order accordingly.	(c) No change.	
(d) Form of board's report; service. For the sake of uniformity the board's report shall conform as nearly as may be practicable to the form of report issued by the Commission in similar cases. The board's report will be served by the Commission.	(d) Form of joint board's initial decision; service. In the interest of uniformity the board's initial decision shall conform as nearly as may be practicable to the form of decision issued by the Commission in similar cases. The board's initial decision will be served by the Commission.	Proposed rule involves only editorial changes. Substitutes "initial decision" for "report."
(e) Termination of joint board jurisdiction; subsequent procedure. The jurisdiction of a joint board over a referred matter shall be terminated in the event of: (1) service of a report as provided in paragraph (d) of this section; (2) submission of the board's conclusions without written report; (3) waiver of action in writing by appropriate authority of each State from which a member is entitled to be appointed; (4) failure of all members of the board to appear at the hearing; (5) failure of a majority of the board to agree; or (6) entry of order vacating the order of reference to the joint board. Except where a report is served as provided in paragraph (d) of this section, in which event the subsequent procedure will be as provided in Rule 96 and subsequent sections, a referred matter, after termination of joint-board jurisdiction, will be decided by the Commission or be made the subject of another officer's report on the record theretofore made or after such hearing or further hearing as may be required.	(e) Termination of joint board jurisdiction; subsequent procedure. The jurisdiction of a joint board over a referred matter shall be terminated in the event of: (1) service of an initial decision as provided in paragraph (d) of this section; (2) submission of the board's conclusions without a written initial decision; (3) waiver of action in writing by appropriate authority of each State from which a member is entitled to be appointed; (4) failure of all members of the board to appear at the hearing; (5) failure of a majority of the board to agree on substantive matters; or (6) entry of order vacating the order of reference to the joint board. Except where an initial decision is served as provided in paragraph (d) of this section, in which event the subsequent procedure will be as provided in Rules 101, 102, 103 and 104, a referred matter, after termination of joint board jurisdiction, will be decided by the Commission or be made the subject of another officer's initial decision on the record theretofore made or after such hearing or further hearing as may be required.	Proposed rule involves only editorial changes. Substitutes "initial decision" for "report." Additional language has been added to Subsection (e)(5) to clarify the fact that the joint board's jurisdiction shall terminate if it disagrees only on substantive matters.

PRESENT	PROPOSED RULE	COMMENT
PLEADING SPECIFICATIONS GENERALLY		
§1100.15 Typographical specifications generally. ~~(Rule 15).~~	No change.	
Except as otherwise provided respecting applications (Rule 38(a)), exhibits (Rule 84(a)), and informal complaints (Rule 24(a)), all pleadings, documents, and papers to be filed under these rules shall be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. To permit binding in covers of uniform size, margins of at least 1½ and 1 inch, respectively, shall be allowed on the left and right margins. Binding shall be on the left margin. Reproduction may be by printing, printing by offset press, multigraphing, or mimeographing, or by any other process, provided the copies are clear and permanently legible. Whiteline blueprints which cannot be reproduced by photography are not acceptable. If directly typewritten, or if in facsimile reproduction of typewriting, the impression may be on both sides of the paper and must be double-spaced, except that long quotations shall be single-spaced and indented. Nothing less in size than Elite type shall be used. If printed, adequate leading and nothing less than 10-point type shall be used, except that 8-point type may be employed in footnotes and in tabular matter where printing limitations so require. A pleading or brief in excess of 50 pages (except a pleading under modified or shortened procedure), including cover pages, indexes, and appendixes, must be printed. Printing by offset press will be accepted: Provided, That the type used is not reduced in size smaller than that required for typewritten documents and that where the pleading or brief exceeds 50 pages, the impression is on both sides of the paper. Failure to observe these specifications will result in rejection.		

PRESENT	PROPOSED RULE	COMMENT
§1100.16 Copies. ~~(Rule 16)~~ (a) Generally. The original and 8 copies of every pleading, document, or paper permitted or required to be filed under this part shall be furnished for the use of the Commission except as a different number is required under paragraph (b) of this section, or as otherwise provided respecting: answers (Rule 35(c)), applications (Rule 38(b) and Rule 40(c)); complaints, formal (Rules 26 and 37) and informal (Rule 24(a) and Rule 25(d)); depositions (Rule 64); exhibits (Rules 84(c) and 86); modified procedure (Rule 52); petitions in intervention (Rule 72(d)); prepared statements (Rule 77); protests in investigation-and-suspension proceedings (Rule 42(c)); replies (Rule 23(b)); and matters respecting oral argument (Rule 98); subpenas (Rule 56(a)); time modification (Rule 21(b)); transcript correction (Rule 90(b)), and petitions for rehearing, reargument, or reconsideration (Rule 101(a)).	§1100.16 Copies. The original and 6 copies of every pleading, document, or paper permitted or required to be filed under this part shall be furnished for use of the Commission except as a different number is otherwise specified in Appendix F hereto which lists the various pleadings, documents, or papers normally filed with the Commission.	Reduces required copies from "original and 8" to original and 6" except as appears otherwise in the Appendix. This is an important change which should give economic benefit to the public and reduce Commission files. Also note that provision for a new Appendix F will be of great help to the public by enabling discernment at a glance of the number of copies required for any pleading filed with the Commission.
(b) In bankruptcy proceedings. Except as otherwise provided in an application form or instruction (Rule 38) and respecting exhibits (Rule 84(c)), the original and 19 copies of every pleading, document, or paper filed in a proceeding arising under the Uniform Bankruptcy Act shall be furnished for the use of the Commission. [FR Doc. 75-2261 Filed 1-23-75; 8:45 am]	Deletion of Rule 16(b) is proposed.	Note that this Rule with its outlandishly high number of copies required is no longer needed and that only 6 (instead of 19) copies will be needed purusant to new Rule 16.

§1100.17 Attestation and verification. ~~(Rule 17)~~ (a) Practitioner's signature. If a party is represented by a practitioner each pleading, document, or paper of such party shall be signed in ink by one such practitioner whose address shall be stated. The signature of a practitioner constitutes a certificate by him that he has read the pleading, document, or paper; that he is authorized to file it; that to the best of his knowledge, information, and belief there is good ground for it; that it is not interposed for delay; and that with respect to a complaint he files it with the distinct knowledge and specific consent of complainant. A pleading document, or paper thus signed need not be verified or accompanied by affidavit except as otherwise provided respecting applications (Rule 38), modified procedure (Rule 50), and statements of claimed damages (Rule 100).	No change.	

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(b) When no practitioner's signature. A pleading, document, or paper not signed by a practitioner must be signed in ink, the address of the signer shall be stated, and the facts alleged in a pleading must be verified under oath by the person in whose behalf it is filed. Signature and verification in such manner must be by at least one complainant if the pleading is a complaint. A pleading document, or paper filed on behalf of a corporation or other organization authorized to make complaint under the act, which is not signed by a practitioner must be signed in ink, and the facts alleged in a pleading must be verified by an executive officer of such corporation or organization.	No change.	
§1100.18 Affirmation in lieu of oath. ~~(Rule 18)~~ Whenever under this part an oath is required, an affirmation in judicial form will be accepted in lieu thereof.	No change.	
	§1100.19 Pleadings part of record. Recitals of material and relevant facts in a pleading filed prior to oral hearing in any proceeding, unless specifically denied in a counterpleading filed under these rules, shall constitute evidence and be a part of the record without special admission or incorporation therein, but if request is seasonably made, a competent witness must be made available for cross-examination on the evidence so included in the record. Pleadings may contain specific references to or quotation from the tariffs or schedules containing the several rates, fares, charges, schedules, classifications, regulations or practices alleged to be material. A filing under Rule 42, ~~Petition for suspension of tariffs or schedules~~ Protests against tariffs or schedules, shall not be considered a pleading for the purposes of this rule.	Changes last line to substitute "Protests against tariffs or schedules" for "Petitions for suspension of tariffs or schedules."

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§1100.20 Amendments. ~~(Rule 20)~~ Leave to file amendments to any pleading will be allowed or denied as a matter of discretion.	No change.	
§1100.21 Time. ~~(Rule 21)~~ (a) Computation. In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is Saturday, Sunday or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. A half holiday shall not be considered as a holiday.	No change.	The Committee considered allowing an additional three-day period when service is made by mail, in conformity with Rule 26(c) of the Federal Rules of Appellate Procedure. The majority felt, however, that the existing rule should be retained.
	(b) Modification. Except as to the maximum time periods provided by law or specified in this part respecting informal complaints seeking damages (Rule 25), any time period prescribed or permitted in this part may, upon request and for good and sufficient cause, be modified by the Commission in its discretion. Requests for extension or modifications of time must be served upon all parties of record at the same time and by the same method of communication as service is made on the Commission. A request for postponement of date for filing briefs or other documents must be filed not less than 10 days before the due date. ~~In question, except in extraordinary circumstances, and where such requests are filed less than 10 days before the due date the petitioning party shall state the reasons for his failure to make such request within the prescribed time.~~ Only the ~~The~~ original ~~only~~ of the request and certificate of service need be filed with the Commission. If granted, the party making the request shall promptly so notify all parties to the proceeding and so certify to the Commission.	Changes are largely editorial, with one being designed to eliminate an apparent invitation for the late filing of requests for postponement.

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§1100.22 Service; Pleadings and Papers to Show	§1100.22 Service of pleadings and papers. ~~to show.~~	Proposed new rule essentially recognizes upgrading of first-class mail service to airmail service.
	(a) Generally. Except as otherwise provided in paragraph (b) of this section, or as otherwise provided respecting applications (Rule 38(b)), formal complaints (Rule 34), and informal complaints (Rule 24(b)), every pleading, document, or paper must, when filed, or tendered to the Commission for filing, include a certificate showing simultaneous service thereof upon all parties to the proceeding. Such service shall be made by delivery in person, or by first-class ~~or air~~ mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service ~~shall be effected~~ upon the parties ~~to the proceeding~~ shall be by the same means of communication and class of service ~~that is~~ employed in making delivery to the Commission: Provided, however, That when delivery is made to the Commission in person, and it is not feasible to serve the other parties in person, service shall be made ~~upon parties 1000 or more miles from the party effecting service by air mail and upon parties less than 1000 miles distant~~ by first-class or ~~air~~ express mail. When any party is represented by a practitioner, service upon such practitioner will be deemed service upon the party.	
(b) Exceptions as to letter. Copies of letters to the Commission relating to oral argument (Rule 98) and subpenas (Rule 56(a)) need not be served upon other parties to the proceeding.	No change.	

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§1100.23 Replies	§1100.23 Replies. (a) Time for filing. Except that a reply to a reply is not permitted, and except as otherwise provided in paragraph (b) of this section and respecting answers (Rule 35(c)) and modified procedure (Rule 51), ~~and briefs (Rules 92 and 93)~~, an adverse party may file and serve a reply to any pleading permitted under the rules in this part within 20 days after filing at the Commission. (b) Replies to ~~petitions under Rule 101 and exceptions~~ administrative appeals. A reply to ~~a petition~~ an administrative appeal filed under Rule 101 seeking a change in a decision, order, or requirement may be filed and served within 20 days after the final date for filing such ~~petitions~~ administrative appeals. ~~, and a reply to exceptions filed under Rule 96 may be filed and served within 20 days after the final date for filing such exceptions~~. (c) Copies. The original of the reply should be accompanied by the same number of copies as required respecting the pleading to which the reply is responsive.	Proposed new Rule 23 reflects editorial changes only.

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COMMENCEMENT OF PROCEEDINGS		
§ 1100.24 Informal complaints not seeking damages. (Rule 24)		
(a) Form and content. Informal complaint may be by letter or other writing, and will be serially numbered and filed as of the date of its receipt. No form of informal complaint is suggested, but in substance the letter or other writing (original and one copy shall be filed) must contain the essential elements of a formal complaint as specified in Rules 28 and 30. It may embrace supporting papers.	No change.	
(b) Correspondence handling. If the informal complaint appears to be susceptible of informal adjustment, a copy or a statement of the substance thereof will be transmitted by the Commission to each person complained of in an endeavor to have it satisfied by correspondence and thus obviate the filing of a formal complaint.		
(c) Discontinuance without prejudice. A proceeding thus instituted on the informal docket is without prejudice to complainant's right to file and prosecute a formal complaint, in which event the proceeding on the informal docket will be discontinued.		
§§ 1100.25 Informal complaints seeking damages. (Rule 25)		
(a) Actual filing required. Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.	No change.	
(b) Content. An informal complaint seeking damages, when permitted under the act, must be filed within the statutory period, and should contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint should state: (1) that complainant makes claim for damages, (2) the name of each individual seeking damages, (3) the names of defendants against which claim is made, (4) the commodities, the rate applied, the		

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date when the charges were paid, by whom paid, and by whom borne, (5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery, (6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement, and (7) the nature and amount of the injury sustained by each claimant.

(c) Statement of prior claim. If a complaint filed under paragraph (b) or (e) of this section contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the Commission, reference to such complaint must be given.

(d) Copies. The original of an informal complaint seeking damages must be accompanied by copies in sufficient number to enable the Commission to transmit one to each defendant named.

(e) Special-docket proceedings. Where the act provides for an award of damages for violation thereof and a carrier is willing to pay them, or to waive collection of undercharges, petition for appropriate authority should be filed by the carrier on the special docket in the form prescribed by the Commission. If the petition is granted an appropriate order will be entered. Such petition, when not filed in connection with an informal complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer thereto admitting the matters stated in the petition. If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a statement setting forth the facts may be filed by the carrier within the statutory period. Such statement will be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute.

(f) Six months' rule. If an informal complaint seeking damages cannot be disposed of informally, or is denied, or is withdrawn by complainant from further consideration, the parties affected will be so notified in writing by the Commission. The matter in such complaint will not be reconsidered unless, within six months after

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the date such notice is mailed, either a formal complaint as to such matter is filed, or it is informally resubmitted on an additional fact basis. Such filing or resubmission will be deemed to relate back to the date of the original filing, but reference to that date and the Commission's file number must be made in such resubmission or in the formal complaint filed. If the matter is not so resubmitted, or included in a formal complaint, as provided in this section, complainant will be deemed to have abandoned the complaint and no complaint seeking damages based on the same cause of action will thereafter be placed on file or considered unless itself filed within the statutory period.		

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§1100.26 Formal complaints; copies (a) Generally. The original of each formal complaint, amended or supplemental formal complaint, or cross complaint, must be accompanied by copies in sufficient number to enable the Commission to serve one upon each defendant, including each receiver or trustee, and retain six copies in addition to the original.	No change. (b) Provision for State authorities. If complaint is made under Part II of the act, or respecting State-made rates (Rule 30(b)), sufficient copies in addition to those required under paragrpah (a) of this section shall be furnished to permit the Commission to supply one to the appropriate authority in each of the States included in the scope of the complaint.	For clarity, since several rules contain the words "of the Act" which are added here.
§ 1100.27 Formal complaints; joinder. (a) Causes of action. Two or more grounds of complaint concerning the same principle, subject, or state of facts may be included in one complaint, but should separately be stated and numbered. (b) Complainants. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and concern substantially the same alleged violation of the act and a like state of facts. (c) Defendants. If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the act participating therein, and against which an order is sought, should be made defendants. If complaint is made of a classification or any provision thereof, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination. (d) Correct designation of parties. The unabbreviated names of all parties complainant and defendant must be stated correctly.	No change.	

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§ 1100.28 Formal complaints; allegations generally. A formal complaint should be so drawn as fully and completely to advise the parties defendant and the Commission in what respects the provisions of the act have been or are violated or will be violated, and should set forth briefly and in plain language the facts claimed to constitute such violation. If two or more sections or subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement should be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done by reference or otherwise without undue repetition.	No change.	
§ 1100.29 Formal complaints; when damages sought. A formal complaint that includes a request for an award of damages should contain the information specified for an informal complaint seeking damages (Rule 25, paragraphs (b) and (c)).	No change.	

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	§ 1100.30 Formal complaints; discrimination, preference, and prejudice.	
	(a) Generally. A complaint that alleges the act is violated because of an undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, or unjust discrimination should specify clearly the particular elements stated in the act as constituting such violation, and the facts which complainant relies upon to establish it. Such elements may include a special rate, rebate, drawback, or other device; and a particular person, company, firm, association, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic.	The footnote that is in the present rule is eliminated and incorporated as the second sentence.
(b) State-made rates. A complaint that brings in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, upon the ground that it violates provisions of the act which prohibit undue or unreasonable advantage preference, or prejudice as between persons or localities in intrastate commerce and persons or localities in interstate or foreign commerce, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, should bring in issue the justness and reasonableness of the rate, fare, charge, classification, regulation, or practice applicable to the interstate or foreign commerce involved in such complaint. Such complaint should also bring in issue the question as to what should be the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice that should be established so as to remove any such advantage, preference, prejudice, or such unjust discrimination.	No change.	

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§1100.31 Formal complaints; other specifications.	No change.	
(a) Tariff or schedule references. The several rates, fares, charges, schedules, classifications, regulations, or practices on which complaint is made should be set out by specific reference to the tariffs or schedules in which they appear, whenever that is practicable.		
	(b) States in which transportation occurs. A formal complaint under Part II of the act should specifically name the States in and through which the transportation which gives rise to the complaint is performed.	See comment for Rule 26(b)
(c) Hearing place. A formal complaint should be accompanied by a statement of the place at which hearing is desired.	No change.	

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§ 1100.32 Formal complaints; prayers for relief. (a) Generally. A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. (b) Specific prayer for damages. Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.	No change.	
§ 1100.33 Amended and supplemental formal complaints. An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants.	No change	
	§ 1100.34 Service of formal and cross complaints. The Commission will serve formal complaints. It will also serve supplemental, amended, and cross complaints and specific amendments to all complaints when it has granted leave to file such pleadings. Such service will be made personally upon a carrier or freight forwarder or upon an agent thereof designated for purposes of service, or by mail addressed to the carrier or freight forwarder or to the agent thereof at the address filed. If no agent has been designated, service may be made by posting	Editorial changes only.

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	in the office of the Secretary of the Commission, and if the defendant be a carrier subject to Part II of the act, by also posting in the office of the secretary or clerk of the motor carrier regulatory board of the State wherein the motor carrier maintains headquarters. If the complaint involves only the lawfulness of rates, fares, charges, classifications, or practices, service in the manner indicated in the third sentence of this section may be made upon an attorney in fact of a carrier or freight forwarder who has filed a tariff or schedule on behalf of such carrier or freight forwarder, but such service will not be made upon a carrier subject to Part I of the act unless such carrier has failed to designate an agent for service in the city of Washington.	
§ 1100.35 Answers and cross complaints to formal complaints. (a) Generally. An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It must be drawn so as fully and completely to advise the parties and the Commission of the nature of the defense, including, if a departure from the requirements of section 4(1) of the act is involved, the number of the particular application or order, if any, which protects such departure; and must admit or deny specifically and in detail each material allegation of the pleading answered. An answer may embrace a detailed statement of any counter-proposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show clearly the names of all defendants joining therein, and their concurrence. (b) Cross complaints. A cross complaint, alleging that other persons, parties to the proceeding, have violated the act or requirements established pursuant thereto, or seeking relief against them under the act, may be tendered for filing by a defendant with its answer.	No change	

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(c) Time for filing; copies. Unless otherwise directed by the Commission, an answer to a complaint should be filed within 20 days after the day on which the complaint to which answer is filed was served. The original and six copies of an answer shall be filed with the Commission. (d) When issue joined. If any defendant answers or fails to file and serve answer within the period specified in paragraph (c), issue thereby is joined as to such defendant.		
§ 1100.36 Motions to dismiss or to make more definite and certain. (a) As to complaint. Defendant may file with his answer, or with his statement under modified procedure, a motion that the allegations in the complaint be made more definite and certain, such motion to point out the defects complained of and details desired. Defendant may also file with his answer a motion to dismiss a complaint because of lack of legal sufficiency appearing on face of such complaint. (b) As to answer. No replication to the answer shall be filed, but any party may file, within 10 days after the filing of an answer, or, in the case of modified procedure, complainant may file with his statement in reply, a motion that the answer, or defendant's statement, as the case may be, be made more definite and certain, such motion to point out the defects complained of and the details desired.	No change	
§ 1100.37 Satisfaction of complaint. If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.	No change	

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	§ 1100.38 Applications ~~(a)~~-Forms and instructions. An application filed with the Commission shall be prepared in accord with and contain the information called for in the form of application, if any, prescribed by the Commission, or any instructions which may have been issued by the Commission with respect to the filing and service of an application.	The changes in this section are editorial in nature. Subsection(b) is deleted as unnecessary because all instructions are included in the first part of the rule.
(b) Copies; service. Copies of an application shall be furnished in such number, and be filed and served in the manner and upon the persons specified in the form or instruction.	Deletion of Rule 38(b) is proposed.	
§ 1100.39 Applications; notice Appropriate notice of the filing of an application will be given by the applicant or by the Commission to the States, to State authorities, or to other persons as may be required by the form or instruction or by the act.	No change	
§ 1100.40 Protests against applications (a) Content. A protest against the granting of any application shall set forth specifically the grounds upon which it is made and contain a concise statement of the interest of protestant in the proceeding.		
	(b) When filed. Any protest shall be filed with the Commission promptly after the application is filed. If the proceeding be one respecting which the Commission has issued a notice advising the public of the filing of the application, the protest shall be filed within the time specified in such notice. ~~Failure to file a protest shall not prejudice subsequent participation in the proceeding.~~	The last sentence of Rule 40(b) is deleted, in order to encourage prospective parties to make their interest known at an early date. If the protest time is missed an appropriately supported petition for leave to intervene may be filed.
(c) Copies; service. A protest filed under this section shall be served upon applicant and, unless otherwise specified		

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in the public notice, the original and six copies of the protest shall be filed with the Commission. (d) When rule disregarded. An application may be set for hearing without awaiting the filing of a protest or of a reply thereto, and also may be disposed of without regard to the prior paragraphs of this section unless the act provides that the particular application may be granted only upon hearing.		
§1100.41 Valuation proceedings; protests. A protest of a tentative valuation shall contain a concise statement of the essential elements of protest with particular reference to the matters in the tentative valuation concerning which protest is made and shall include a statement of the changes therein desired by protestant. When practicable, each object of protest should be set up as a separate item in a separately numbered paragraph. Each item of protest against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When protestant claims that property owned or used has been omitted, a full description of such property and its location must be included in the protest.	Change in title only: Protests in valuation proceedings.	For clarity, since the rule falls in context with rules on various pleadings, e.g. following rule 40 on protests in general.

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§ Petitions for suspension of tariffs or schedules. (Rule 42)	§ 1100.42 ~~Petitions~~ Protests against ~~for suspension of~~ tariffs or schedules.	Title change to be consistent with Rules 40 and 41 which deal with protests.
	(a) Content. The protested tariff or schedule sought to be suspended should be identified by making reference to the name of the publishing carrier, freight forwarder, or agent, to the Interstate Commerce Commission number, and to the specific items or particular provisions protested. Reference should also be made to the tariff or schedule, and the specific provisions thereof, proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful, and state what protestant offers by way of substitution. Such protests will be considered as addressed to the discretion of the Commission ~~and no protest shall include a prayer that it also be considered a formal complaint~~. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.	Subsection 42(a) is modified to conform to section 202(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, which requires that protests to rail rate changes include a complaint.
(b) When filed. Protests against, and requests for suspension of, tariffs or schedules filed under the act will not be considered unless made in writing and filed with the Commission at Washington, D. C. Such protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraph (c) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30-days notice under the authority of this Commission, in which event the protests should be filed not less than 5 days before such effective dates. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraph (a) of this section and copies thereof are immediately telegraphed by protestants to the respondent carriers or their publishing agents. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.	No change.	
(c) When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of a proposed rate restructuring, which	(c) Motor carrier tariff bureau filings. No change.	To add a caption for the matter covered by paragraph (c).

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proposals are subject to the special procedures prescribed in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, protests thereto shall reach the Commission at least 20 days before the published effective dates of those schedules. To assure consideration, replies to protests should reach the Commission not later than the seventh workday prior to the effective date of the protested schedules.		
	(d) Copies; service. The original and ~~seven~~ six copies of each protest, except as provided in paragraph (e), or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested.	Change in first line of 42(d) to clarify that an original and six copies are required, not seven copies.
	(e) Passenger fare increases. The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission.	New paragraph to reflect the Commission's order in Ex Parte No. 286 (349 I.C.C. 741, 794).
	~~(e)~~ (f) Reply to protest. A reply to a protest filed under this section ~~should be filed and served promptly.~~ must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided.	Provisions revised to align the rule with our actual requirements.
(g) Special requirements for protests against revisions to rail rates and charges. Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers or their publishing agents that result in revisions of rates or charges shall also include a verified complaint containing specific facts showing: (1) that without suspension the protested tariffs or schedules will cause substantial injury to the complainant or the party represented by the complainant, and (2) that it is likely that complainant or the party represented by the complainant will prevail on the merits pursuant to any applicable provisions of the act.	Change only in number, from present Rule 42(f) to Rule 42(g).	To implement provisions of Public Law 94-210 regarding verified complaints.

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§1100.43 Service of investigation order; default where failure to comply.		
An order instituting an investigation will be served by the Commission upon respondents. If within the time period stated in that order a respondent fails to comply with any requirement specified therein, respondent shall be deemed in default and to have waived any further hearing. Thereafter the investigation may be decided without further proceedings.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
PETITIONS SEEKING INSTITUTION OF RULEMAKING PROCEEDINGS § 1100.44 Petitions seeking institutions of rulemaking proceedings. Any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules, or regulations of general applicability and significance designed to implement or interpret law, or to formulate general policy for future effect. No reply to such a petition may be filed. Whether a proceeding shall be instituted as requested is within the discretion of the Commission and the ruling on the petition will be final.	Add at end of present rule: In the event a rulemaking proceeding is instituted by the Commission, the procedure to be employed for the taking of evidence or the receipt of views and comments will be designated by Commission order.	Rulemaking proceedings are instituted either (a) upon the Commission's own motion or (b) at the request of a member of the public pursuant to Rule 44. Rule 44 generally provides that any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules or regulations of general applicability and significance designed to implement or interpret law or to formulate policy for future effect. No reply is permitted to this type of pleading and the Commission's decision thereon is final, and is not subject to review. There are no special rules of Commission practice concerning rulemaking, and procedures may vary from case to case; but the Commission fully satisfies the procedural requirements of the Administrative Procedure Act. Generally, a rulemaking proceeding is instituted by formal order of the entire Commission (formulating, amending, or repealing a rule), together with an accompanying notice of the proposal. Such notice contains a specific description of the proposed rule or the issues involved, sets forth the reasons therefor, makes reference to the legal authority under which the rule is proposed, and makes provision for interested persons to make representations, views and comments, for or against the action proposed or in respect to the involved issues, within a prescribed period. Notice of the institution of the rulemaking is given to the public by publication of the order and accompanying notice in the Federal Register. The Commission's procedures do not normally contemplate oral hearings at the initial stage. Provision for the taking of evidence and the presentation of views may be made by subsequent order authorizing or directing, among others, replies to representations, oral hearing, or oral argument. Rulemaking may also be accompanied by investigation proceedings, and the Bureau of Enforcement and all or specified regulated carriers may be made parties. The procedures now used appear adequate, and afford the Commission a flexibility in dealing with various problems and issues

PRESENT RULE	PROPOSED RULE	COMMENT
		according to their importance. We believe this flexibility should be preserved. Accordingly, it is recommended that no code be formulated at this time.
§ 1100.45 Modified procedure, how initiated. (a) Commission's initiative or by request. Modified procedure (see Rule 5 (j)) will be ordered in a proceeding upon the Commission's initiative or upon its approval of a request filed by any party that the modified procedure shall be observed.	(b) Order directing modified procedure. An order directing modified procedure will list the names and addresses of the persons who at that time are parties to the proceeding, and direct that they comply with the modified procedure rules. As used in Rules 49, 51, and 53 the term "complainant" shall comprehend ~~the term "respondent" or "applicant", and the term "defendant" shall include the term "protestant," according as procedure under Rules 45 to 54, inclusive, may be ordered in a particular proceeding,~~ the party having the initial duty to establish the truth of the claim or to justify the relief or authorization sought, and the term "defendant" shall comprehend the party controverting the truth of the claim or opposing the relief or authorization sought.	(b) There appears to be some problem in the use of the term "complainant" to comprehend "respondent" or "applicant", and the term "defendant" to include "protestant". This is of special concern, in rate cases, particularly in the application of Rules 49(a) and 51. Those rules, in effect, reflect the burden of going forward in a case. A carrier proposing a changed rate is the "proponent" or "respondent" and has the burden of proof. However, where a carrier proposes an initial rate, the "protestant" has the burden of proof. (Rule 74 properly reflects these burdens). Rule 45(b) is changed accordingly.
§ 1100.46 Modified procedure; effect of order. (a) Relief from answer rule. Issuance of an order directing modified procedure shall relieve defendant from the obligation of answering as provided in Rule 35. (b) Default where failure to comply. If within any time period provided in the modified procedure rules a party fails to file a pleading required by those rules, or otherwise fails to comply therewith, such party shall be deemed to be in default and to have waived any further hearing. Thereafter the proceeding may be disposed of without further notice to the defaulting party, and without other formal proceedings as to such party.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.47 Modified procedure; intervention. Persons permitted to intervene under modified procedure shall file and serve pleadings in conformity with the provisions relating to the parties in whose behalf they intervene.	No Change	
§ 1100.48 Modified procedure; joint pleadings. Parties having common interests shall arrange for joint preparation of pleadings filed under modified procedure.	No change	
§ 1100.49	Modified procedure; content of pleadings. (a) Generally. A statement filed under the modified procedure after that procedure has been directed shall state separately the facts and arguments and include the exhibits upon which the party relies. If, pursuant to Rule 46(a). no answer has been filed, defendant's statement must admit or deny specifically and in detail each material allegation of the complaint. In addition defendant's statement in reply shall: specify those statements of fact and arguments or the opposite party to which exception is taken, and include a statement of the facts and arguments in support of such exception. Complainant's statement of reply shall be confined to rebuttal of the defendant's statement.	For clarity. Rule 46 has two paragraphs, each of which involves a type of "waiver". The provision is to make it clear that Rule 49(a) is directed to paragraph (a) of Rule 46 only.
	(b) Exhibit identification. ~~In addition to being in compliance with Rule 8 (a) and (b),~~ An exhibit which is part of any pleading filed under modified procedure shall serially be numbered and bear the notation, properly filled out, in the upper right-hand corner: "Complainant (Defendant)----------, Exhibit No.----------Witness----------."	The first part of paragraph (b) is deleted as unnecessary and redundant. The requirements of present Rules 8(a) and (b), and proposed Rules 8 and 9, apply to all submissions.
(c) Damages. If an award of damages is sought the paid freight bills or properly certified copies thereof should accompany the original of complainant's statement when there are not more than 10 shipments, but otherwise the documents should be retained.	(c) No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.50 Modified procedure; verification. The facts asserted in any pleading filed under modified procedure must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses orally to substantiate the facts asserted should hearing become necessary. The original of any pleading filed under modified procedure must show the signature, capacity, and impression seal, if any, of the person administering the oath, and the date thereof.	No change.	
	§ 1100.51 Modified procedure; when pleadings filed and served. Within 20 days from the date of service of an order requiring modified procedure, complainant shall serve upon the other parties a statement of all the evidence upon which it relies. Within 30 days thereafter defendant shall serve its statement. Within 20 days thereafter complainant shall serve its statement in reply. No further reply may be made by any party except by permission of the Commission. ~~[38 FR 31008, Nov. 9, 1973]~~	Rule 51 is clarified to reflect current procedure in which the time begins to run from the service date of an order, rather than from the date of the order. The Federal Register citation is unnecessary and is therefore deleted.
§ 1100.52	Modified procedure; copies of pleadings. Except as otherwise provided in Rule 247, the original and six copies of any statement made pursuant to Rule 51 shall be filed with the Commission. Subsequent pleadings are subject to Rule 54.	Certain provisions of Rule 247, e.g. Rules 247(d)(3) and (e)(3) require only one copy of certain documents involved.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.53 Modified procedure; hearings. (a) Request for cross examination or other hearing. If cross examination of any witness is desired the name of the witness and the subject matter of the desired cross examination shall, together with any other request for oral hearing, including the basis therefor, be stated at the end of defendant's statement or complainant's statement in reply as the case may be. Unless material facts are in dispute, oral hearing will not be held for the sole purpose of cross examination. (b) Hearing issues limited. The order setting the proceeding for oral hearing, if hearing is deemed necessary, will specify the matters upon which the parties are not in agreement and respecting which oral evidence is to be introduced.	No change.	
§ 1100.54 Modified procedure; subsequent procedure. Procedure subsequent to that provided in the modified procedure rules shall be the same as that in proceedings not handled under modified procedure.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
Notice of Hearing; Subpenas; Discovery; Depositions		
	§1100.55 Notice of hearing.	
	(a) Assignment; service and posting of notice; electronically recorded transcript. In those proceedings in which a an oral hearing is to be held, the Commission will, by order or otherwise, assign a time and place for hearing. Such action will include notice when the transcript is to be made by electronic recording. Notice of such hearing will be posted in the Office of the Secretary of the Commission and will be served upon the parties and such other persons as may be entitled to receive notice under the act.	It is noted that consideration has been accorded to the matter of striking from Rules 55(a) and (b) all references to the electronic recording of hearings because of unsatisfactory experience in the one or two instances where it has been used heretofore. However, the Committee decided that this material should be left as is on the basis that, at some future time, an improved and workable method of electronically recording hearings may become available. Paragraph (a) has been clarified to show that it applies only to oral hearing.
(b) Requests for changes in assignment. Requests for postponements of date of hearing will be granted only for good and sufficient cause. After notice of the use of electronic recording, any request for stenographic transcript by the Commission's official reporter in lieu thereof must be made in writing to the Secretary of the Commission not less than 20 days prior to the date of the hearing. Such request will contain a statement that the requestor will provide the Commission with the original and one copy of such stenographic transcript at his own expense in accordance with the schedule of charges in the official reporting contract. In the event a request is made for a written transcript of an electronic recorded proceeding at a later date, the requestor will furnish at no expense to the Commission, an original and one copy of such written transcript for the Commission's use, in accordance with the schedule of charges in the official reporting contract.	No change.	
(c) Service of notice of assignment change. The Commission may confine the service of notice of a change of time or place assigned for hearing (other than by publication or posting), or of any adjourned, further, or supplemental hearing to those only who have indicated to the Commission a desire to be notified, at their own expense if telegraphic advice becomes necessary, of any such change.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.56 Subpenas.		
(a) Requests; particularity. Unless directed by the Commission upon its own motion, a subpena to compel a witness to produce documentary evidence will be issued only upon petition showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired, and the facts expected to be proved thereby; Provided, however, That for good cause shown, in lieu of a petition, the request for such a subpena may be made orally upon the record to the officer presiding at the hearing. A request for issuance of a subpena other than to compel the production of documentary evidence may be made either by letter (original only need be filed with the Commission) or orally upon the record to the officer presiding at the hearing. A showing of general relevance and reasonable scope of the evidence sought may be required and the subpena will be issued or denied accordingly.	No change.	
(b) Issuance. A subpena may be issued by the Commission or by the officer presiding at the hearing, but only under the signature of the Secretary or of a member of the Commission.	No change.	
(c) Service. The original subpena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be delivered to him by the officer or person making service.	No change.	
(d) Return. If service of subpena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereof, stating the date, time, and manner of service; and return such affidavit on, or with, the original subpena in accordance with the form thereon. In case of failure to make service the reasons for the failure shall be stated on the original subpena. The written acceptance of service of a subpena by the person	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
named therein shall be sufficient without other evidence of return. The original subpena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, shall be returned forthwith to the Secretary of the Commission, or, if so directed on the subpena, to the officer presiding at the hearing at which the person subpenaed is required to appear.		
(e) Witness fees. A witness who is summoned and responds thereto is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpena is served, except that when the subpena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.	No change.	
§1100.57 Discovery.	§1100.57 Discovery.	
(a) In general. Unless otherwise ordered in accordance with these rules, or as required by the Interstate Commerce Act or other applicable statutes, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in rules 200 and 225), including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.	(a) In general. Unless otherwise available under the Interstate Commerce Act or other applicable statutes, parties may obtain discovery pursuant to these rules (Rules 57-67, inclusive) regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in Rules 24, 25, 200 and 225, and proceedings that need not be determined on a record after hearing); provided that, discovery procedures may be used only when the Commission, upon its own motion, or upon a verified petition filed by a party, and upon good cause shown, shall have entered an order approving such use. Such petitions must be filed in sufficient time to allow for the filing of replies thereto and for consideration by the Commission without requiring the postponement of any established date for hearing or for submission of initial statements under the modified procedure. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.	Although the Commission's discovery rules have been in existence in their present form for a relatively short period of time, experience thereunder clearly demonstrates a need for a "tightening up" of these rules. Of the four principal methods of discovery encompassed by the present Rules of Practice, only two (viz, interrogatories and requests for admissions) may be used without first having obtained approval by the Commission pursuant to the filing of an appropriate petition and a showing of good cause therefor. It is now quite clear that the unfettered right to serve interrogatories has been abused, with the result that parties have been harassed and unduly burdened thereby. Further, it is most questionable whether any real benefit has stemmed from the free use of interrogatories, particularly in those application proceedings covered by Rules 240 and 247. Although the unrestricted right to file requests for admissions does not appear to have been abused as yet, it would seem to be only a matter of time before this right is used in the same manner as that respecting interrogatories. Thus, to terminate such abuse of the discovery rules, as well as to prevent their use solely for purposes of delay, the Committee proposes that

PRESENT RULE	PROPOSED RULE	COMMENT
		all discovery procedures be available only upon the filing of a petition and a showing of good cause therefor. The proposed rule also includes a provision respecting the timely filing of petitions for discovery in order to preclude any disruption of hearing or modified procedure schedules.
	(b) Definition. The term "Commission," as used in these discovery rules (Rules 57-67, inclusive), means the Interstate Commerce Commission, division, Commissioner or presiding officer.	Proposed Rule 57(b) is a new rule designed to (1) clarify the fact that discovery matters may be disposed of by a division, individual Commissioner or presiding officer, as well as by the Commission itself, and (2) eliminate a seeming inconsistency between the discovery rules and Rule 70 (which specifically provides that hearing officers may dispose of discovery requests). Additionally, the new Rule 57(b) will operate to assure that the Commission is not overburdened by numerous procedural matters.
	~~(b)~~ (c) Protective conditions. Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered, and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place; (3) that the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility in indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred; (4) that the discovery may be had only by a method other than that selected by the party seeking discovery; (5) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (6) that discovery be conducted with no one present except persons designated in the protective order; (7) that a deposition after being sealed be opened only by order of the Commission; (8) that a trade secret or other confidential research	Proposed Rule 57(c) consists in the present Rule 57(b) with the addition of a needed provision at the end designed to preclude premature requests for protective orders.

PRESENT RULE	PROPOSED RULE	COMMENT
	development, or commercial information not be disclosed or be disclosed only in a designated way; and (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under Rules 60(d), 62(a) or 67.	
	~~(c)~~ (d) Sequence and timing of discovery. Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.	Proposed Rule 57(d) is exactly the same as the present Rule 57(c). The only change consists in the renumbering.
	~~(d)~~ (e) Stipulations regarding discovery. Unless otherwise ordered, ~~the parties may by~~ a written stipulation entered into by all the parties and filed with the Commission may (1) provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.	Proposed Rule 57(e), although substantially the same as the present Rule 57(d), reflects language changes designed to assure that the stipulations are entered into by all the parties.
§1100.58 Deposition.	§1100.58 Deposition	
(a) Purpose. The Commission will either upon its own initiative, or upon receipt of a verified petition filed by a party or one who reasonably expects to be a party to a proceeding, and upon good cause shown, issue an order to take the testimony of any person, including a party, by deposition upon oral examination (1) for use as evidence, (2) for discovery, or (3) for any person who desires to perpetuate his testimony or that of another person regarding any matter that may be cognizable in any proceeding before the Commission.	(a) Purpose. Subject to the proviso in Rule 57(a), the testimony of any person, including a party, may be taken by deposition upon oral examination.	It is proposed that Rule 58(a) be greatly simplified and shortened for the reasons (1) that the first several lines of the present Rule are no longer needed in light of the proposed new proviso in Rule 57(a), and (2) that the last several lines of the present Rule constitute surplusage.

PRESENT RULE	PROPOSED RULE	COMMENT
	(b) Petitions. ~~-A-~~The petition filed under Rule 57(a) requesting an order to take a deposition and perpetuate testimony or to produce documents and materials (1) shall be filed with due regard to the time periods specified in ~~§1100.59(c)~~ Rule 59(c); (2) shall set forth the facts it desires to establish and the substance it expects to elicit; (3) shall be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced; (4) shall set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and (5) shall specify with particularity the documents and materials which the deponent is requested to produce.	The change in the beginning of this Rule is designed to direct attention to the fact that a petition seeking a deposition is subject to the overriding requirements set forth in proposed Rule 57(a). The second change corrects the form of rule-citation used in the present Rule 58(b). It should be noted here that the form of rule-citation employed throughout the present discovery rules is completely out of line with that used in the remainder of the Rules of Practice. This proposed change is intended to achieve conformity with proposed Rule 1(c), as well as uniformity in citations appearing throughout the Rules of Practice.
	(c) Order. If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it ~~shall issue an order, which action may be taken without awaiting the filing of a reply, and~~ will serve ~~such~~ an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission ~~or presiding officer~~ may make orders of the character provided by ~~§1100.67~~ Rule 67.	The change proposed in the first sentence of Rule 58(c) will not operate to preclude the Commission from disposing of petitions for depositions without awaiting replies thereto in the circumstances described in the Rule. However, the Committee is of the view (1) that the disposition of such petitions, without awaiting the filing of replies thereto, is a type of action which should be avoided wherever possible, and (2) that the language proposed to be stricken constitutes an invitation to parties to seek such action. Accordingly, it is recommended that such language be deleted. The editorial change at the end of the Rule merely sets forth the citation in proper form. Also, the term hearing or presiding officer is embraced in the word "Commission", see Rule 57 (b), and the unnecessary wording is eliminated.

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§1100.59 Depositions, location, officer, time, fees, absence, disqualification.

(a) Where deposition shall be taken. Unless otherwise ordered or agreed to by stipulation, depositions shall be taken in the city or municipality where the deponent is located.

No change.

PRESENT RULE	PROPOSED RULE	COMMENT
(b) Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.	No change.	
(c) When taken. Unless under special circumstances and for good cause shown, no deposition shall be taken within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the deposition is taken in a foreign country it shall not be taken within 30 days prior to such date.	Deletion of Rule 59(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the taking of depositions, it is contemplated that such order will specify the time within which the deposition will be taken. Thus, there will no longer be any need for current Rule 59(c).
(d) Fees. A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee shall be paid by the party at whose instance the deposition is taken.	(c) Fees.	Change in the number of the paragraph.
	(d) Failure to attend or to serve subpena; expenses. (1) If the party who filed a petition pursuant to ~~§1100.58(b)~~ Rule 58(b) fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order entered under ~~§1100.58(c)~~ Rule 58(c), the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees. (2) If the party who filed a petition pursuant to ~~§1100.58(b)~~ Rule 58(b) fails to serve a subpena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable	The changes proposed in Rules 59 (d)(1) and (2) merely convert the citations to the proper form and assign the proper number to the paragraph.

PRESENT RULE	PROPOSED RULE	COMMENT
	expenses incurred by him and his representative in so attending, including reasonable attorney's fees.	
(f) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.	(e) Disqualification for Interest	Renumbering of the paragraph.
§1100.60 Depositions. Procedures		
(a) Examination. Examination and cross-examination of witnesses shall proceed as permitted at a hearing. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and he shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.	No change.	
(b) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:	No change.	
(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.	No change.	
(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose. (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds: (i) That the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at public hearing, to allow the deposition to be used.	No change.	
(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.	No change.	
	(c) Effect of taking or using depositions. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under paragraph (b)(2) of this rule ~~section~~. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.	The proposed change in Rule 60(c) is necessary to correct an inadvertent or typographical error in the present Rule. Absent this change, Rule 60(c) is inconsistent with the corresponding rule in the Federal Code and does not make sense. At the end of the second sentence, the word "rule" replaces the incorrectly used word "section".
	(d) Motions to protect. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a	This change converts the citation to the proper form. It also reflects the fact that present Rule 57(b) is proposed herein to be

PRESENT RULE	PROPOSED RULE	COMMENT
	expenses incurred by him and his representative in so attending, including reasonable attorney's fees.	
(f) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.	(e) Disqualification for Interest	Renumbering of the paragraph.

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§1100.60 Depositions. Procedures

(a) Examination. Examination and cross-examination of witnesses shall proceed as permitted at a hearing. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and he shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.	No change.	
(b) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:	No change.	
(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.	No change.	
(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.		
(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds: (i) That the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at public hearing, to allow the deposition to be used.	No change.	
(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.	No change.	
	(c) Effect of taking or using depositions. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under paragraph (b)(2) of this rule ~~section~~. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.	The proposed change in Rule 60(c) is necessary to correct an inadvertent or typographical error in the present Rule. Absent this change, Rule 60(c) is inconsistent with the corresponding rule in the Federal Code and does not make sense. At the end of the second sentence, the word "rule" replaces the incorrectly used word "section".
	(d) Motions to protect. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a	This change converts the citation to the proper form. It also reflects the fact that present Rule 57(b) is proposed herein to be

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	showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in ~~§1100.57(b)~~ Rule 57(c). If the order made terminates the examination, it shall be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.	renumbered as Rule 57(c).
	(e) Recordation. The officer before whom the deposition is to be taken shall observe the provisions of ~~§§1100.15~~ Rules 15 and ~~1100.71~~ 71 respecting appearances and typographical specifications, shall put the witness on oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.	The editorial changes in Rule 60(e) are intended solely to correct the form of the citations.
(f) Signing. When the testimony is fully transcribed or otherwise recorded, the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.	No change.	
(g) Attestation. The officer shall certify on the deposition that the witness was duly	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is not a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel, or is financially interested in the proceeding.		
(h) Return. The officer shall securely seal the deposition in an envelope indorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send the original and one copy of all exhibits, by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.	No change.	
(i) Notice. The party taking the deposition shall give prompt notice of its filing to all other parties.	No change.	
(j) Copies. Upon payment of reasonable charges therefor, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.	No change.	
§1100.61 Effect of errors and irregularities in depositions.		
(a) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.	No change.	
(b) As to taking of deposition. (1) Objection to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.	No change.	

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(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.	No change.	
	(c) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under ~~§§1100.59~~ Rules 59 and ~~1100.60~~ 60 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.	Editorial changes proposed solely to reflect proper method of citing other rules in conformity with proposed Rule 1(c).
	§1100.62 Written interrogatories to parties.	
	(a) Availability; procedures for use. Subject to the proviso in Rule 57(a), ~~Any~~ any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served shall also be filed with the Commission. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by	The proposed change in Rule 62(a), i.e., the insertion at the beginning of the Rule of the words "Subject to the proviso in Rule 57(a)," calls attention to the applicability of that proviso in any instance where a party desires to serve interrogatories. Upon reference to that proviso the party is advised that he may not serve interrogatories unless he shall have first filed a verified petition showing good cause therefor and the Commission shall have issued an order approving service of the interrogatories. This procedure further contemplates that the order issued will routinely fix the time period within which the interrogatories must be served, thereby enabling the later deletion herein of present Rule 62(c).

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	the party submitting the interrogatories, but not less than 15 days after the service thereof.	
	(b) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilations, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the ~~Interstate Commerce~~ act, it shall be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the ~~Interstate Commerce~~ act.	Editorial change.
(c) When written interrogatories must be served. Unless under special circumstances and for good cause shown, no written interrogatories shall be served within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 30 days prior to such date.	Deletion of Rule 62(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the service of interrogatories, it is contemplated that such order must specify the time by which the interrogatories are to be served. Thus, there will no longer be any need for the present Rule 62(c). It should also be noted that this present Rule has been a constant source of trouble. As written, it allows service of interrogatories up to within 10 days prior to the date of hearing, whereas those answering the interrogatories have an additional 15 days from that service date to serve their answers.

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		Thus, under the present rules, a hearing could be well underway before the final date for the serving of answers to interrogatories is reached. This situation has been begging for correction, and it is the view of the Committee that the changes proposed will effect such correction.
	§1100.63 Request for admission.	
	(a) Availability; procedures for use. Subject to the proviso in Rule 57(a), ~~A~~ a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of ~~§1100.57(a)~~ Rule 57(a) set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served shall also be filed with the Commission. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or	The principal proposed change in Rule 63(a), i.e., the insertion of the words "Subject to the proviso in Rule 57(a)," is intended to call attention to the applicability of that proviso in any instance where a party desires to serve requests for admissions. By reference to that proviso the party is advised that he may not serve such requests unless he shall have first filed a verified petition showing good cause therefor and the Commission shall have issued an order approving service of the requests. This procedure further contemplates that the order issued will routinely fix the time period within which the requests for admissions must be served, thereby permitting the later deletion herein of the present Rule 63(c). The other two proposed changes in Rule 63(a) merely reflect the proper method of citing other Rules in conformity with proposed Rule 1(c).

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	deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not on that ground alone, object to the request; he may, subject to the provisions of ~~§1100.67 (c)~~ Rule 67(c), deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections shall be filed with the Commission.	
(b) Effect of admission. Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.	No change.	
(c) When written requests for admission must be served. Unless under special circumstances and for good cause shown, no requests for admission shall be served within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country, they shall not be served within 30 days prior to such date.	Deletion of Rule 63(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the service of a request for admissions, it is contemplated that such order will, as a matter of routine, specify the time by which such request is to be served. Thus, there will no longer be any need for the present Rule 63(c). Otherwise, the rationale for the deletion of Rule 63(c) is the same as that advanced for the deletion of Rules 59(c) and 62(c), the corresponding rules for depositions and interrogatories.
	§1100.64 Depositions, requests for admission, and written interrogatories, and responses thereto: inclusion in record.	
	At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses, may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part	The proposed changes in the title and body of Rule 64 are intended to make clear that this Rule provides for inclusion in the record of the responses to the discovery vehicles.

PRESENT RULE	PROPOSED RULE	COMMENT
	introduced, and any party may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto shall be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.	
§1100.65 Supplementation of responses.	No change.	
A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:	No change.	
(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.	No change.	
(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.	No change.	
(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.		
	§1100.66 Production of documents and things and entry upon land for inspection and other purposes.	
	(a) Scope. ~~Upon petition by any party and upon good cause shown, the Commission may issue an order and direct~~ Subject to the proviso in Rule 57(a), any party may be ordered and directed (1) to produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph	The change proposed at the start of Rule 66 (a) calls attention to the applicability of the proposed new proviso in Rule 57(a) and deletes language rendered unnecessary thereby. The remaining changes proposed in this Rule are editorial in nature, merely correcting the form of citing other Rules in order to achieve compliance with proposed Rule 1(c).

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	records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of ~~§1100.57(a)~~ Rule 57(a) and which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to ~~§1100.62(b)~~ Rule 62(b); or (2) to permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of ~~§1100.57(a)~~ Rule 57(a).	
	(b) Procedure. Any petition filed pursuant to this rule shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.	Editorial change to reflect deletion of certain language at the beginning of Rule 66(a).

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§1100.67 Failure to respond to discovery.

(a) Failure to answer. If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under ~~§1100.60(a)~~ Rule 60(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to ~~§1100.62(a)~~ Rule 62(a), the party seeking discovery may apply for an order compelling an answer, by motion filed with the Commission and served on all parties and ~~persons affected thereby~~ deponents. Such motion to

The first three proposed changes in Rule 67(a) are editorial in nature.

The principal change proposed in this Rule consists in the new sentence setting time limits within which motions to compel answers must be filed with the Commission. As matters presently stand, there is no time limitation within which motions to compel answers must be filed, and the Committee is advised that parties have been dilatory in filing such motions, even waiting up until the time that

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	compel an answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.	the hearing is scheduled to begin. The proposed change would remedy this situation.
	(b) Failure to comply with order. (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under sections 12(3) and 12(4) of the ~~Interstate Commerce~~ Act to compel appearance and compliance with the Commission's order. (2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under ~~§1100.66~~ Rule 66 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following: (i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order; (ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony; (iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof.	The only change proposed in this Rule is to correct the form of a citation made in subparagraph (2).
	(c) Expenses on refusal to admit. If a party, after being served with a request under ~~§1100.63~~ Rule 63 to admit the genuineness	Editorial change only is proposed in Rule 67(c) to correct the form of rule citation utilized.

PRESENT RULE	PROPOSED RULE	COMMENT
	of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact, the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.	
	(d) Failure of party to attend or serve answers. If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under ~~§1100.62~~ Rule 62, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.	Editorial change only is proposed in Rule 67(d) to correct the form of rule citation utilized.
(e) Expenses against United States. Expenses and attorney's fees are not to be imposed upon the United States under this rule.	No change.	
It is ordered, That notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of this Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.	Deletion of this paragraph in its entirety.	It is apparent that this paragraph was included in the present Rule through inadvertence. It properly should be deleted.

Hearings

§1100.68 Prehearing conferences.

(a) Purposes. Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their attorneys may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering: (1) The simplification of issues; (2) The necessity or desirability of	No change.

PRESENT RULE	PROPOSED RULE	COMMENT
amending the pleadings either for the purpose of clarification, amplification, or limitation; (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof; (4) The procedure at the hearing; (5) The limitation of the number of witnesses; (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and (7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding.		
(b) Facts disclosed privileged. Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, shall not be used against participating parties either before the Commission or elsewhere unless fully substantiated by other evidence.	No change.	
(c) Recordation and order. Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered and defining the issues, shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.	No change.	
(d) Objection to the order; subsequent proceedings. If an order is entered a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements reached at such conference. Thereafter the terms of the said order or modification thereof, the written stipulation, or statement of the officer, as the case may be, shall determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.69 Stipulations. Apart from the procedure contemplated by the prehearing provisions (Rule 68), and upon permission granted, the parties may in the discretion of the officer, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. It is desired that the facts be thus agreed upon so far as and whenever practicable.	No change.	
	§1100.70 Authority of officers. (a) An officer may grant leave to amend or to file any pleadings, or to intervene, upon request tendered at the hearing, but in no event shall an officer grant ~~such~~ leave to amend if thereby the issues would be so ~~narrowed~~ changed as to make a referred matter one which should properly be referred to a different officer. An officer shall have no power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding. The officer shall regulate the procedure in the hearing before him, and shall have authority to take all measures necessary or proper for the efficient performance of the duties assigned him, including the ~~disposition of requests for discovery~~ authority to hold hearings, to administer oaths and affirmations, to examine witnesses, to issue subpenas at the hearing and (subject to the proviso of Rule 57(a)) dispose of requests for discovery, to hold conferences for the settlement and simplification of issues, to rule on motions and dispose of procedural requests, to make initial decisions, and to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts. Any proceeding in which an oral hearing is held and in which the officer can announce his decision either (1) on the record after the close of the taking of testimony or (2) by appropriate notification to the parties after the filing of briefs, may be made the subject of an initial decision prepared.	The change in the first sentence (viz, substitution of the word "changed" in lieu of "narrowed") is intended to broaden the admonition regarding amendments, thereby advising joint boards to guard against any amendment which would so broaden the issues as to affect their jurisdiction.

PRESENT RULE	PROPOSED RULE	COMMENT
	by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him. The hearing officer's authority in each proceeding will terminate upon the service of the initial decision, or upon the certification of the record in the proceeding to the Commission, or when he shall have withdrawn from the proceeding upon considering himself disqualified.	The third sentence of Rule 70(a) has been amplified to spell out more completely the presiding officers' authority. The fourth sentence in the proposed Rule 70(a) provides for bench decisions, comparable to those permitted by Special Rule 247(i), in any and all categories of Commission proceedings. This procedure is permissive, not mandatory. It affords a vehicle for speedy decisions in the more routine type of cases in which no unique or momentous issues are present. There appears to be no valid reason for limiting this practice to operating rights application cases as at present. It is not contemplated that the provision for bench decisions would be used in proceedings involving complex issues of fact or law, or in unopposed proceedings. It is recognized that implementation of this bench decision provision in Rule 70(a) will necessitate deletion of the present Special Rule 247(i). The fifth sentence in proposed Rule 70(a) meets a long-standing need by specifying when the jurisdiction of a hearing officer terminates.
	(b) At any oral hearing conducted before the Commission, ~~or before~~ an Administrative Law Judge ~~of the Commission~~ or joint board, at which an official record of the proceeding is made, the recording of the hearing by means of live or delayed television, radio, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter will not be permitted without special permission of the Chairman of the Commission. ~~[32 FR 20066, Dec. 2, 1967, as amended at 38 FR 7563, Mar. 23, 1973.]~~	The proposed change in Rule 70(b) is aimed essentially at curing an omission in the present Rule by giving recognition to the fact that oral hearings also are conducted by joint boards.

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§1100.71 Appearances; standard of conduct; absence from hearing.	No change.	
(a) Who may appear. Any individual may appear for himself and any member of a partnership which is a party to any proceeding may appear for such partnership upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.		
(b) Appearances. An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. When a practitioner enters an appearance at a hearing he will be expected to represent his client faithfully until the completion of the proceeding in which he has been retained, or until the completion of the part of the proceeding for which he has specially appeared. A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or wilfully to absent himself therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person desires to appear specially, he must expressly so state when he enters his appearance and at that time he shall also state the questions or issues to which he is confining his appearance; otherwise, his appearance will be considered as general.	No change.	
(c) Standard of conduct. Contemptuous conduct by any person appearing at a hearing shall be ground for his exclusion by the presiding officer from the hearing.	No change.	
	(d) Absence from hearing. If a party or the person representing him ~~his representative~~ shall, after entering an appearance, attempt to withdraw from the hearing in a manner other than that specified in paragraph (b) of this section, the Commission on its own motion, or on motion of any party to the proceeding, may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the	Editorial change.

PRESENT RULE	PROPOSED RULE	COMMENT
	case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or the disciplining of the practitioner concerned.	
§1100.72 Intervention; petitions.		
(a) Content generally. A petition for leave to intervene must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the relief sought. If the proceeding be by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.	No change.	
(b) When filed. A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after except for good cause shown.	No change.	
(c) Broadening issues; filing. If the petitioner seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in season to permit service upon and answer by the parties in advance of the hearing.	No change.	
(d) Copies; service; replies. When tendered at the hearing, sufficient copies of a petition for leave to intervene must be provided for distribution as motion papers to the parties represented at the hearing. If leave be granted at the hearing, one additional copy must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and three copies of the petition shall be submitted to the Commission together with a certificate that service in accordance with Rule 22 has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.		
(e) Disposition. Leave will not be granted except on averments reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner thereby becomes an intervener and a party to the proceeding.	No change.	
	§1100.73 Participation without intervention.	
	In an investigation proceeding, in a proceeding under paragraphs (18) ~~to (20) inclusive~~ of section 1, or ~~sections 5 and~~ 13a of Part I of the act, ~~in application proceedings under parts II, III, and IV;~~ and in a proceeding of any one of the characters herein enumerated when heard on a consolidated record with a complaint proceeding, but in no other proceeding, an appearance may be entered at the oral hearing without filing a petition in intervention or other pleading, if no affirmative relief is sought, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.	The present Rule 73 has been the root cause of much confusion on the part of the public. Only too frequently, persons rely upon this Rule as the basis for their participation in section 5 proceedings and in application proceedings under sections II, III and IV of the Act. Later, to their consternation, they learn that those proceedings (which constitute the bulk of the Commission's hearing docket) are covered by Special Rules 240 and 247 which exempt such proceedings from the application of Rule 73 (except as concerns persons seeking to intervene in support). Even with respect to the last-mentioned exception, there exists a possibility that this provision [in Special Rule 247(h)] could be relied upon in an attempt to thwart the application of the so-called "Schaeffer Rule" which is contained in Rule 247(b). In light of the foregoing, the Committee believes that Rule 73 must be changed in the manner noted. Although the Committee considered deleting this Rule in its entirety, it concluded that this Rule does serve a valuable purpose in investigation, abandonment, and discontinuance cases. However, in line with the original intent of this Rule, the Committee proposes that its application be limited solely to orally heard proceedings. It is recognized that the proposed change in Rule 73 will necessitate modification of Special Rules 240(g) and 247(h). Editorial changes were made to conform to the 4 R Act.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.74 Witness examination; order of procedure. Witnesses will be orally examined under oath before the officer unless their testimony is taken by deposition or the facts are presented to the Commission in the manner provided under modified ~~or shortened~~ procedure. In formal-complaint, application, and investigation proceedings complainant, applicant, and respondent, respectively, shall open and close at the hearing, except at further hearings granted on petition the petitioner requesting further hearing shall open and close; and except, further, that parties other than the respondent shall open and close in investigations in which the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer, who also shall designate the order of presentation in any other type of proceeding, of any other party to any proceeding, or of parties to several proceedings being heard upon a consolidated record.	The only change proposed in Rule 74 consists in the striking of the words "or shortened" as they appear in the first sentence of the Rule. The wording proposed to be stricken refers to an archaic type of procedure which has long been discontinued. Thus, it serves no useful purpose and amounts to nothing more than surplusage.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.75 Evidence; admissibility generally. Any evidence which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.	No Change.	
§1100.76 Evidence; cumulative restriction. It shall be the duty of the officer before whom any proceeding is being heard to limit the number of witnesses whose testimony may be merely cumulative. And in order to enforce this section, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered.	No Change.	
§1100.77 Evidence; prepared statements. With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of his opinion prepared by him, or written answers to interrogatories of counsel, or a prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement shall not include argument that before any such statement is read, or admitted in evidence the witness shall deliver to the officer, the reporter, and to opposing counsel as may be directed by the officer, a copy of such statement or of such interrogatories and his written answers thereto; and that the admissibility of the evidence contained in such statement shall be subject to the same rules as if such testimony were produced in the usual manner, including the right of cross-examination of the witness. Such approval ordinarily will be denied when in the opinion of the officer the memory or demeanor of the witness may be of importance.	No Change	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.78 Evidence; official records. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.	No Change.	
§1100.79 Evidence; entries in regular course of business. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.80 Evidence; documents containing matter not material. When material and relevant matter offered in evidence is in a document containing other matter not material or relevant, the offering party shall produce the document at the hearing, shall plainly designate the matter so offered, and shall accord to the officer and to participating counsel an opportunity to inspect it. Unless it is desired to read such matter into the record, and the officer so directs, true copies in proper form of the material and relevant matter taken from the document may be received as an exhibit, but other parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant. The document itself will not be received.	No Change.	
§1100.81 Evidence: documents in Commission's files. (a) In general. If any matter contained in a report or other document, not a tariff or schedule, open to public inspection in the files of the Commission is offered in evidence such report or other document need not be produced but in other respects the provisions of Rule 80 will apply. (b) Tariffs and schedules; official notice in investigation proceedings. If any matter contained in a tariff or schedule on file with the Commission is offered in evidence, such tariff or schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified and may be received in evidence subject to check by reference to the original tariff or schedule. Official notice will be taken without offer or production of that portion of any tariff or schedule which is the subject matter of an order of investigation and suspension.	No Change.	
§1100.82 Evidence; records in other Commission proceedings. If any portion of the record before the Commission in any proceeding other than the one on hearing is offered in evidence a true copy of such portion shall be presented for the record in the form of an exhibit unless:	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.82 Evidence; records in other Commission proceedings. (Continued) (a) The party offering the same agrees to supply such copy later at his own expense, if and when required by the Commission; and (b) The portion is specified with particularity in such manner as to be readily identified; and (c) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any other portion offered by any other party may be incorporated by like reference subject to paragraphs (a) and (b) of this section; and (d) The officer directs such incorporation. Any such portion so offered, whether in the form of an exhibit or by reference, shall be subject to objection.		
§1100.83 Evidence; abstracts of documents. When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive in evidence other than a limited number of such documents said to be typical. Instead he may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with Rule 100. If the proffer be for other purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.		No Change.
§1100.84 Evidence; exhibits. (a) Generally. Exhibits of a documentary character may have a maximum width of 22 inches by 12½ inches in height. Whenever practicable the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever		No Change.

§1100.84 Evidence; exhibits. (Continued)

practicable, rate comparisons and other evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of fact, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) Reference to tariff authority, routes, and distances. All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor, and if distances are shown must also show the authority therefor and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed; except that the routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short-line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

(c) Copies. Unless the officer shall otherwise direct, the original and one copy of each exhibit of a documentary character shall be furnished for the use of the Commission - original to be delivered to the reporter, and the copy to the officer. If the hearing be before a board, a copy of the exhibit shall be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies shall be furnished to counsel in attendance at the hearing. Unless the officer shall otherwise direct, in proceedings under the Uniform Bankruptcy Act, the original and three copies of every exhibit of a documentary character shall be furnished for use of the Commission - original to be delivered to the reporter, and the three copies to the officer.

(d) Interchange prior to hearing. Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

PRESENT RULE	PROPOSED RULE	COMMENTS
§1100.84 Evidence; exhibits. (Continued) (e) When excluded how treated. In case an exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.		
§1100.85 Record in referred matter unaffected by a second reference. If for any reason an order referring a matter to a particular officer is vacated and the matter referred to a different officer, any testimony already taken in such proceeding shall be part of the record along with any testimony which thereafter may be taken.	No Change.	
	§1100.86 Evidence; filing of subsequent to hearing; copies. Except as provided below or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence supplementary to the existing record, within a stated period of time. Documentary evidence thus to be furnished ~~will not be assigned an exhibit number at the hearing, but the document~~ will be given an exhibit number at the time of filing and the parties accordingly advised. Unless otherwise directed by the officer, the original and one copy of such submission shall be filed with the Commission.	Editorial change only.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.87 Evidence; objections to. Formal exception to a ruling of an officer at a hearing is unnecessary. It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds therefor. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in exceptions or reply to exceptions, if filed, or in a separate petition dealing only with that objection. Rulings of the presiding officer at the hearing may not be appealed ~~during the hearing~~ prior to service of the initial decision except where such ruling (a) may result in substantial detriment to the public interest or undue prejudice to any party, and the presiding officer so finds, (b) denies or terminates any person's participation, (c) grants a request for the inspection of documents not ordinarily available for public inspection, (d) overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or (e) for some other reason might, in the opinion of the presiding officer, result in substantial irreparable harm. ~~[32 FR 20064, Dec. 20, 1974, as amended at 39 FR 22426, June 24, 1974]~~	It is the view of the Committee that sound operating practice requires that Rule 87 be modified to provide that rulings made by the presiding officer may not be appealed prior to service of the initial decision except in the circumstances set forth in (a) through (e) of the present Rule.
§1100.88 Oral argument before officer. If oral argument before the officer is desired, he should be so notified at or before the hearing and may arrange to hear the argument at the close of the testimony within such limits of times as he may determine, having regard to other assignments for hearing before him. Such argument will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument shall not preclude oral argument before the Commission and request therefor may be made as provided in Rule 98.	§1100.88 Oral argument before the hearing officer. At the discretion of the hearing officer and upon reasonable notice to the parties oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs. Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument shall not operate to preclude oral argument before the Commission pursuant to Rule 98.	It is the view of the Committee that the proposed substantial revision of Rule 88 is needed, and that it should be beneficial to both the Commission and the public. The main thrust of the revision is to afford a viable alternative to the filing of written briefs, thereby enabling the saving of the considerable period of time generally required for the filing of briefs. Under the present system whereby transcripts of testimony ordinarily are not available until 15 days after the close of the hearing, the filing of written briefs usually entails a minimum period of

PRESENT RULE	PROPOSED RULE	COMMENT
		about 45 days from the end of the hearing. This time period for briefs necessarily contributes to the so-called "regulatory lag." Clearly, a real savings in time could be effected by encouraging oral argument at the hearing (wherever possible) as an alternative to the filing of written briefs. The Committee also is of the view that the utilization of oral argument at the hearing, as an alternative to written briefs, constitutes effective compliance with section 557(c)(1) of the Administrative Procedure Act.
§1100.89 Continuance for further hearing.		
A continuance may be granted by the presiding officer if it is impossible to conclude a hearing within the time available, or for any reason a continuance is necessary or advisable, but a joint board shall not set a date and place for a continued hearing without first consulting the Commission. If consultation with the Commission is impracticable, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.90 Transcript of Record. (a) Filing. After the close of the hearing the complete transcript of testimony taken and the exhibits shall be filed with the Commission. (b) Corrections. A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections shall be served upon all parties of record and with 2 copies to the official reporter. (c) No free copies. No free copies of transcript will be furnished to any party to any proceeding.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
Briefs; Reports; Oral Argument		
§1100.91 Briefs; content and arrangement.		
(a) Due date. The due date of each brief must appear on its front cover or title page.	No change.	
	(b) Table of contents; citations. A brief of more than 20 pages shall contain on its front flyleaves a table of contents and points made with page references, the table of contents to be supplemented by a list of citations, alphabetically arranged, with references to the pages ~~where~~ in which they appear.	Editorial change.
(c) Sketch or chart. In proceedings wherein misrouting or undue prejudice or preference are alleged, the complainant should include as part of the brief a small sketch or chart adequately reflecting the situation.	No change.	
	(d) Evidence abstract. A brief filed after a hearing ~~should~~ may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. ~~The abstract should follow the statement of the case and preeede the argument.~~ In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise relied upon in support of the respective statements of fact made throughout the brief.	These changes are intended to discourage to some extent the filing of briefs which routinely contain or are accompanied by abstracts of evidence, by making it clear that while abstracts of evidence may be filed, they are optional and not required by the rules. The Commission or a hearing officer could still require the filing of an abstract where circumstances warranted.
(e) Requested findings. Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.	No change.	
	(f) Exhibit reproduction. Exhibits should not be reproduced in the brief, but may, if desired, be shown, within reasonable limits, in an appendix to the brief. Analyses of such exhibits should be included in the brief ~~abstract of evidence under the subjects to which they pertain~~ where pertinent.	This change is to make subparagraph (b) consistent with the changes in subparagraph (d), so that any analyses of exhibits will appear in the brief rather than in an abstract of evidence.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.92 Briefs; when ~~officer's report is served~~ filed. In a proceeding which has been the subject of oral hearing, and in which ~~an officer's report is to be prepared and served~~, briefs are to be filed, which fact will be stated by the officer on the record, only one brief shall be filed by each party. The officer shall fix for all parties the same time within which to file briefs, which time shall not exceed 45 days from the close of the hearing unless otherwise ordered by the Commission. Reply briefs are not permitted unless ordered by the Commission.	Rules 92 is the same as Rule 93 except that Rule 92 refers to "Briefs; when officer's report is served", while Rule 93 refers to "Briefs; when officer's report is not served." Inasmuch as both refer to briefs in a proceeding which has been the subject of an oral hearing, and are otherwise the same except for an officer's report, there is no need for two separate rules. Therefore, the two rules, in effect, have been combined.
§1100.93 Briefs; when officer's report is not served. In a proceeding which has been the subject of oral hearing, and in which no officer's report is to be prepared and served, which fact will be stated by the officer on the record, only one brief shall be filed by each party. The officer shall fix for all parties the same time within which to file briefs, which time shall not exceed 45 days from the close of the hearing unless otherwise ordered by the Commission. Reply briefs are not permitted unless ordered by the Commission.	Deletion of Rule 93 in its entirety	As indicated above, Rule 93 has, in effect, been combined with Rule 92 and is no longer necessary as a seperate rule.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.94 Briefs of interveners. Briefs of interveners shall be filed and served within the time fixed for the briefs or the party in whose behalf the intervention is made.	Deletion of Rule 94 in its entirety	Rule 94 is superflous. Interveners are parties once intervention is permitted, and there is no need for this particular rule.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.95 Officer's report; when and how served. After expiration of the time set for filing briefs, if the proceeding be one in which a hearing has been held, the officer's report will be prepared and served by mailing a copy to each party. An officer's report prepared in a proceeding in which a hearing has not been held will be served by mailing a copy to each party of record and to any other persons not parties to the proceeding who are believed to have an interest in the proceeding.	§1100.95 Officer's initial decision. (a) How served. An officer's initial decision will be served by mailing a copy to each party of record and to other persons who are believed to have an interest in the proceeding. (b) When and how effective as the order of the Commission. If no exception is filed to the initial decision made by a Commissioner, an administrative law judge, or a joint board and the Commission does not stay it, the initial decision becomes the order of the Commission upon expiration of the period for filing exceptions, or of any postponement of such period, or postponement of the effective date of such initial decision, and a notice stating that the initial decision has, giving the date, become the order of the Commission will be mailed to the parties by the Commission. The initial decision of officers other than individual commissioners, administrative law judges, and joint boards are final decisions, although exceptions as defined in Rules 101, 102, and 103 may be filed.	The proposed major modification of Rule 95 has a threefold purpose. First, the revised Rule reflects the official change in Commission terminology by referring to the officer's decision as an "initial decision" rather than a "report." Secondly, it greatly simplifies the somewhat cumbersome language in the present Rule 95. Lastly, in view of the proposed deletion of Rule 97 as part and parcel of a rather substantial revision of the Rules concerning administrative appeals, it is believed necessary to add paragraph (b) to Rule 95 in order that the public may continue to be apprised as to the matter of when and how an initial decision becomes effective as the order of the Commission. The distinction in the last sentence is necessary because section 17 of the act 49 U.S.C. 17, establishes different procedures for initial decisions made by an individual commissioner, administrative law judge, or joint board, on the one hand, and, on the other, the entire Commission, divisions thereof, and review boards.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.96 Exceptions to officer's report. (a) Generally. Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relied upon to support the exception and a corrected statement must be incorporated. (b) When filed. Within 30 days after service of the officer's report, any party may file and serve exceptions thereto and reasons in support thereof. Replies may be served and filed as provided in Rule 23. In any case the Commission may, in its discretion, upon notice to the parties reduce or extend the time for filing exceptions or replies. (c) Exceptions and request for hearing by person not party. If the proceeding is one in which no oral hearing has been held, any person not a party to the proceeding, but having an interest therein, may file and serve upon applicant, or complainant, as the case may be, exceptions to the officer's report and reasons in support thereof. A request for hearing may be included therein but the exceptions need not include a request for hearing if none is deemed necessary.	Delete in its entirety.	(a) Rule 96 would be covered by proposed Rules 101-103. See comment on Rules 101-103.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.97 Effect of exceptions or absence thereof. (a) Upon report and recommended order. The filing of exceptions to a recommended order operates to stay the effectiveness of the order and thereafter decision by the Commission will be made in due course. If no exception is filed to the recommended order and the Commission does not stay it, the recommended order becomes the order of the Commission upon expiration of the period for filing exceptions provided in Rule 96(b), or of any postponement of such period, or postponement of the effective date of such order, and a notice stating that the recommended order has, giving the date, become the order of the Commission will be mailed to the parties by the Commission. (b) Upon proposed report. A proposed report will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertained error the officer's statement of the issues and of the facts ordinarily will be taken by the Commission as the basis of its decision.	Delete in its entirety.	Regarding the effect of the failure to file exceptions will be covered by proposed Rule 95(b) Rule 97(b) is rendered unnecessary by the proposed Rules 95(b) and 5(h) and (i).

PRESENT RULE

§1100.98 Oral argument before Commission.

(a) Request; how made. If no officer's report is to be served, request for oral argument before the Commission must be made at hearing or by letter (original only need be filed with the Commission) within 10 days after the hearing. If an officer's report is to be served, the request for oral argument must be included as part of the exceptions brief or reply thereto.

(b) Request for time allotment. If the petition is granted a notice will be served by the Commission upon the parties setting the date for the oral argument. At least 10 days before that date any party desiring to participate in the oral argument must make request by letter (original only need be filed with the Commission) for an allotment of time. Only those making request in this manner will be permitted to participate.

PROPOSED RULE

§1100.98 Oral argument before Commission.

(a) Request, to whom addressed. Request for oral argument should be addressed to the Secretary, Interstate Commerce Commission. Oral argument shall be at the discretion of the Commission or its divisions.

(b) Request, by whom made. Any party may submit a written request for oral argument, stating reasons therefor. No replies shall be entertained.

(c) Request, when filed. Requests for oral argument shall be filed within 30 days after the date of service of the decision, order or requirement being appealed, unless a different time period is fixed by the Commission or division, which shall rule upon such requests by order.

(d) Time allotment. Unless otherwise directed, the proponents of a rule or order will be allowed one half hour for oral argument and shall be heard first. Opponents, in the aggregate, will also be allowed one half hour. One counsel only will be heard for each side, unless additional presentations are specifically authorized and additional time is allocated for them.

COMMENT

Section (a) changes the present rule to make it clear that the Commission itself, which arranges its own hearing schedules, will determine if and when oral argument will be allowed.

Section (b) bars the filing of replies to requests for oral argument. The committee felt that replies were not only unnecessary, but that they could be interposed for purposes of delay if permitted.

Section (c) of the proposed revision requires that all parties, applicants and protestants alike, must request oral argument before the Commission within 30 days from the date of service of the prior decision. This period is consonant with the time for filing exceptions or petitions for administrative review and can be included therein.

The most important change in this rule is embodied in section (d) of the revision which imposes a one half hour limitation per side on oral argument before the Commission. Additionally, that section requires each side to select one representative for the presentation of the argument. The purpose of this proposal is to require counsel for the parties to focus on the critical issues raised on reconsideration and to reduce lengthy arguments which merely review the evidence. Thus, oral argument can be effectively utilized to highlight those aspects of a case which have been fully discussed in the written petitions for review and exceptions. Correspondingly, the limitation on the number of counsel is an effort to eliminate repetitious arguments of parties which have substantially similar interests in the outcome of the proceeding. This rule will benefit both the Commission and the public since it will permit the agency to schedule a number of arguments for a single session as well as afford the public greater personal access to the Commission in its proceedings. These limitations are widely utilized in the United States Courts of Appeals. Moreover, where a particular case involves a multitude of competing interests the Commission will have the discretion to allot additional time and opportunity for argument.

PRESENT RULE	PROPOSED RULE	COMMENT
	Order Compliance; Damage Statements	
	§1100.99 Compliance with Commission's orders.	
	When in consequence of proceedings under the act, the Commission has by its order directed a defendant or a respondent to do or desist from doing a particular thing, such defendant or respondent must notify the Commission on or before the date upon which such order becomes effective, ~~whether or not compliance has been made therewith.~~ of the manner and details of compliance with the order. Such notification shall be in the form of an affidavit subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules and must, when filed or tendered to the Commission for filing, show simultaneous service thereof upon all parties to the proceeding in accordance with Rule 22(a). If a change in rates or schedules is required the notification must be given in addition to the filing of proper tariffs or schedules, and must specify the Interstate Commerce Commission numbers of the tariffs or schedules so filed.	This rule, in its present form, does not require compliance with a Commission order, but only notification whether or not compliance has been made. The proposed change requires a defendant or respondent to notify the Commission, by a subscribed affidavit, of the manner and details of actual compliance. Since there are often other parties to a Commission proceeding who have an interest in the compliance of a respondent or defendant, the proposed rule requires simultaneous service on all parties. There is no change in the last sentence of the current rule.
§1100.100 Statements of claimed damages based on Commission findings.		
When the Commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the form No. 5. (See Appendix B.) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route a separate statement should be	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and correct agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of an order awarding damages.		

PRESENT RULE

§1100.101 Petitions for rehearing, reargument, or reconsideration.

(a) In general. (1) A petition seeking any change in a decision, order, or requirement of the Commission should specify whether the prayer is for reconsideration, reargument, rehearing, further hearing, modification of effective date, vacation, suspension, or otherwise.

(2) Administrative finality of division and employee board decisions. All decisions, orders, or requirements of a division of the Commission in any proceeding shall be considered administratively final, except those involving issues of general transportation importance, those wherein the division reverses, changes, or modifies a prior decision by a hearing officer, and those wherein the initial decision is made by a division: Provided, however, That this subparagraph shall not preclude the seasonable filing of a petition for relief under paragraphs (b) and (c) of this section, to be considered and disposed of by the division or appellate division which made the decision, order, or requirement as to which relief is sought. Decisions of an employee board, whether original or on review, are not administratively final. Such employee board decisions shall be subject to review by an appropriate appellate division of the Commission upon the filing of a timely petition in accordance with these rules of practice.

(3) Limitations on petitions for review of division decisions. Pursuant to authority granted in section 17(6) of the Interstate Commerce Act, the right to apply to the entire Commission for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division of the Commission in any proceeding shall be limited and restricted to those proceedings in which the entire Commission, on its own motion, determines and announces that an issue of general transportation importance is involved. In proceedings in which no such announcement has been made, but in which a division reverses, changes, or modifies a prior decision by a hearing officer or where the initial decision is made by a division, a petition to the same division for rehearing, reargument, or reconsideration of its decision will be permitted and will be considered and disposed of by such division in an appellate capacity and with administrative finality.

(4) Petitions seeking a finding that an issue of general transportation importance is involved; 3-page limitation; time for filing; no reply permitted. In any proceeding which has involved the taking of evidence at oral hearing or by modified procedure in which the Commission has not noted the presence of an issue of general transportation importance, any party may, within 15 days after the service of a final decision, order, or requirement of a division or appellate division, as to which the filing of a petition for rehearing, reargument, or reconsideration is not

PROPOSED RULE

§1100.101 Administrative appeals - All Types

The rules in this section apply to all Commission proceedings:

(a) General. The term "administrative appeals" means exceptions and petitions for administrative review.

(b) Exceptions. (1) Exceptions may be filed to an initial decision, or to a tentative decision, and shall detail the assailed findings, with supporting citations to the record and authorities.

(2) Exceptions shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding and shall be based on the following grounds:

(i) That a necessary finding of fact is erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law, Commission precedent or policy;

(iii) That an important question of law, policy or discretion, is involved which is without governing precedent; or

(iv) That prejudicial procedural error has occurred.

(3) Exceptions shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments, and replies shall be subject to the same limitation.

(4) Exceptions which are not timely filed or do not comply with the requirements in (1) through (3) above will be subject to rejection.

COMMENT

The proposed revision of Rules 101, 102, and 103 is one of the most significant changes in the present rules.

In recognition of the separate procedural requirements for rail and nonrail cases, created by the Railroad Revitalization and Regulatory Reform Act of 1976, the committee felt it would be simplest to treat these matters in 3 separate rules.

Section 101 is applicable to all administrative appeals, both exceptions and petitions for administrative review alike, and to rail and non-rail proceedings, and is an effort to simplify the cumbersome and complicated appeal procedures now described in Rule 101. It also permits the deletion of rules 96 and 97 governing the filing of exceptions.

A definitive section has been added to dispell possible uncertainty as to the all-inclusive nature of the new term "administrative appeal" which is not used in the current rules.

Section (b) of the proposal reflects the committee perception that exceptions should be written to identify the specific findings below which are alleged to be in error, the factual and legal basis of the allegation, and the portions of the record relied upon to support the claim. The revision does not substantively alter the present rules and is derived from Rule 96(a).

Other provisions of Rules 96 and 97 regarding the time for filing exceptions (96(b)), requests for oral hearing (96(c)), and the effect of filing or failure to file exceptions (97(a) and (b)), are included in the proposed revision with all other administrative appeals.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.101 Petitions for rehearing, reargument, or reconsideration. (Continued) permitted, file a petition requesting the Commission to find on its own motion that the proceeding is one involving an issue of general transportation importance. Any petition seeking such a finding shall not be considered an application for rehearing, reargument, or reconsideration within the meaning of section 17 of the act and shall not exceed 3 pages. No reply thereto may be filed and the ruling thereon will be final. Petitions seeking the relief specifically covered herein will not be entertained at any other stage of the proceeding. (5) Copies of petitions and replies. In cases in which it has been determined and announced that an issue of general transportation importance is involved, there shall be furnished for the use of the Commission the original and 14 copies of each petition filed under this section and of replies to such petitions. A like number of copies shall be furnished of petitions seeking a finding that the proceeding involves an issue of general transportation importance. In all other cases, the original and 7 copies of such petitions and replies shall be furnished for the use of the Commission. (6) Rehearing or further hearing. When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (c) Modification of effective date. A petition under this section seeking only modification of the effective date of a decision, order, or requirement, or in the period of notice, or other period or date prescribed therein, must be filed seasonably, except that, in case of unforeseen emergency satisfactorily shown by petitioner, such relief may be sought informally by telegram or otherwise, provided like notice is simultaneously communicated to all parties of record. (d) Reconsideration. If relief under this section other than under paragraphs (b) and (c) is sought, the matters claimed to have been erroneously decided and the alleged errors or relief sought must be specified with the particularity respecting exceptions as outlined in Rule 96(a), as should also any substitute finding or other substitute requirement by petitioner. (e) Time for filing. Except for good cause shown, and upon leave granted, petitions under this section must be filed within 30 days after the date of service of a decision or order, except as otherwise provided in the special rules of practice.		The definition of the term "exceptions" has been expanded to include all appeals from the initial decisions of hearing officers (Administrative law judges, joint boards and individual Commissioners) as well as appeals from employee board decisions (review boards) on modified procedure. The committee believes that the function of these pleadings is conceptually identical and that a clear distinction should be drawn between exceptions from an initial decision without regard to the issuing forum and petitions for administrative review which encompass only appeals from division orders or entire Commission orders. The committee recommends that all initial decisions be labeled as such to avoid any possible confusion at the bar as to the appropriateness of filing exceptions to review board decisions. The limitations imposed upon the scope of the exceptions arise out of the language in Section 303(c) of the 4R Act which expressly refers to the provision of the Administrative Procedure Act, 5 U.S.C. 557(b), authorizing the limiting and defining of issues upon review. The Committee understands that this language in the 4R Act was enacted as a direct result of the Commission's legislative proposal of October 17, 1975, suggesting adoption of this standard. The revised proposal here is designed to narrow the issues on review to the alleged critical substantive and procedures errors while avoiding de novo review of the entire record. The enumerated grounds for exceptions are in keeping with the practice at other agencies and provide adequate opportunity for the parties to challenge the essential basis of the initial decision.

PRESENT RULE

§1100.101 Petitions for rehearing, reargument, or reconsideration. (Continued)

(f) Successive petitions on same grounds, not entertained. A successive petition under this section submitted by the same party or parties, and upon substantially the same grounds as a former petition, which has considered and denied by the entire Commission will not be entertained.

(g) Petitions for reconsideration of appellate division decisions on review of barod decisions. When an appellate division has denied a petition seeking a reversal, change or modification of a determination whether original or on review by a board of employees, any further petition for reconsideration by the same party or parties upon substantially the same grounds will not be entertained. If in the consideration of such a petition, however, by the appellate division, the previous determination of the board of employees has been reversed, changed, or modified, a further petition may be filed by any party to the proceeding adversely affected by the decision of the appellate division, within the time specified in paragraph (e) of this section, and the petition will be considered and disposed of by the same appellate division which passed upon the initial petition.

PROPOSED RULE

COMMENT

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.102 Administrative Appeals - Non Rail Proceedings The rules in this section apply to nonrail proceedings: (a) Conclusiveness. Unless the division or Commission, as the case may be, reverses, changes or modifies the prior decision, order, or requirement or unless the decision, order, or requirement is issued by the division or Commission in the first instance, no further administrative appeal shall lie. (b) Petitions for administrative review. (1) Except when no further administrative appeal shall lie, any party may file a petition for administrative review, which shall detail in what respects further hearing, rehearing, reargument or reconsideration is sought and the reasons therefor. (2) Such specifications of alleged error, relief sought, and argument in support thereof must be summarized, in a preface to the petition, suitably paragraphed, which shall be a succinct, but accurate and clear, condensation of the matters raised on petition. Except in extraordinary circumstances, and upon leave granted, the preface shall not exceed 3 pages. Replies to petitions shall also contain a preface of no more pages than permitted in the petition's preface, and shall address, point by point, the specifications of alleged error, relief sought, and argument in the preface to the petition. In proceedings in which a division reverses, changes, or modifies a prior decision by a hearing officer or an employee board, petitions for reconsideration addressed to the division in an appellate capacity, and replies thereto, shall not exceed 10 pages, in addition to the preface required by this paragraph. (3) When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (c) Time for filing. Exceptions and petitions for administrative review shall be filed within thirty days after the date of service of the decision, order or requirement. For replies, see Rule 23.	Section (a)(of Rule 102) does not reflect a substantive change but emphasizes that the decision of the division or the Commission is administratively final in all proceedings except those specifically exempted. Where a change or initial decision by the division or Commission is involved, an appeal, as now, remains available. Section (b)(1) introduces the term "petitions for administrative review" and includes all available relief sought under the present Rule 101. This section states unequivocally that any party to a Commission proceeding has the right of appellate review except where specifically barred by other provisions of the rules. The proposal is drafted to encourage the petitioner to select the specific type of relief sought on appeal and to discourage the filing of petitions seeking for every conceivable remedy. This is not a substantive change in current Rule 101. Subsections (b)(2) implements the proposal in Ex Parte No. 55 (Sub-No. 19). Section (c) is derived from Rules 96(b) and 101(e) and applies to both exceptions and petitions for administrative review. The purpose of the revision is to emphasize the importance of the 30 day filing period (the same period in the existing rules) and to discourage unsupported requests for extensions. This proposal reflects the current practice of the Office of Proceedings in granting extensions for exceptions and petitions for reconsideration only in cases where the most worthy reasons for failure to comply are advanced. Since it is well established that the Commission always retains the authority to waive or modify its rules of practice where necessary (American Farm Lines v. Black Ball Freight, 397 U.S. 532 (1970)), the committee felt it was unnecessary to include the words "Except for good cause shown" now appearing in Rule 101(e). Such language merely invites requests for extensions. The administrative paperwork and the time needed to process a case could be reduced by severely limiting extensions in the area.

PRESENT RULE	PROPOSED RULE	COMMENT
	(d) Successive petitions. A party shall not be permitted to file a second administrative appeal unless the division or Commission, as the case may be, shall have reversed, changed or modified the prior decision, order or requirement, or where the decision, order, or requirement is issued by the division or Commission in the first instance, in which event the petition shall be limited to the reversal, change or modification, and successive administrative appeals upon substantially the same grounds shall not be entertained.	Section (d) of the proposed revision bars the filing of all successive administrative appeals (exceptions and petitions for further hearing, rehearing, reargument or reconsideration alike) and uniformly governs the appellate review process before the Commission whether from the recommended decision and order of an administrative law judge or the order of a review board under modified procedure. As with Section (c) above, this proposal makes it clear that an appeal can be filed where the decision sought to be reviewed is rendered by the division or the Commission in the first instance. A change included in the proposal however involves the limitation of successive petitions, where permitted, to those aspects of the prior decision which were reversed or changed by the division or Commission. Thus, a complete review of the prior appellate decision which is now available will not be entertained. This proposal will have the effect of narrowing the issues presented for review as the proceeding advances through the Commission's appellate process and will help define and identify the precise matters which are the gravamen of the dispute. Accordingly, a saving in administrative energy should be achieved.
	(e) Administrative finality. The timely filing of exceptions and petitions for administrative review shall, and the Commission on its own motion may, stay the effect of the decision, order or requirement until thirty days after the date of service of the order of the Commission, division or review board acting thereon, unless otherwise provided. Decisions of an employee board whether original or on review, are not administratively final. Such employee board decisions shall be subject to review by an appropriate appellate division of the Commission upon the filing of a timely petition in accordance with these rules of practice.	Section (e) of the proposed revision regarding the effect on the prior decision of filing exceptions or petitions for administrative review is derived from Section 17(8) of the Act, and is not now included in any form under current Rule 101. The committee felt that a clear expression of the staying effect of administrative appeals is sorely lacking in the present rules and is needed to alleviate confusion in this regard. The proposal does not, however, constitute a substantive change in Commission practice since exceptions and petitions for reconsideration now operate to stay the prior decision (except, of course, where a petition for GTI or a successive petition is involved).
	(f) Matters of General Transportation Importance. (1) Limitations on petitions for review of division decisions. Pursuant to authority granted in section 17(6) of the Interstate Commerce Act, the right to apply to the entire Commission for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division of the Commission in any proceeding shall be limited and restricted to those proceedings in which the entire Commission, on its own motion, determines and announces that an issue of general transportation importance is involved. In proceedings in which no such announcement has been made, but in which a division reverses, changes, or modifies a prior decision by a hearing officer or where the initial decision is made by a division, a petition to the same division for rehearing, reargument, or reconsideration of its decision will be permitted and will be considered and disposed of by such division in an appellate capacity and with administrative finality.	Section (f) retains the existing procedures regarding matters of general transportation importance. That procedure has generally worked effectively and promptly and should not be disturbed.

PRESENT RULE	PROPOSED RULE	COMMENT
	(2) Petitions seeking a finding that an issue of general transportation importance is involved; 3-page limitation; time for filing; no reply permitted. In any proceeding which has involved the taking of evidence at oral hearing or by modified procedure in which the Commission has not noted the presence of an issue of general transportation importance, any party may, within 15 days after the service of a final decision, order, or requirement of a division or appellate division, as to which the filing of a petition for rehearing, reargument, or reconsideration is not permitted, file a petition requesting the Commission to find on its own motion that the proceeding is one involving an issue of general transportation importance. Any petition seeking such a finding shall not be considered an application for rehearing, reargument, or reconsideration within the meaning of section 17 of the Act and shall not exceed 3 pages. No reply thereto may be filed and the ruling thereon will be final. Petitions seeking the relief specifically covered herein will not be entertained at any other stage of the proceeding.	Section (g) is applicable to petition for stay pending judicial review and does not now appear in the General Rules of Practice. It is derived from Rule 18 of the Federal Rules of Appellate procedure which provide that an application to the United States Courts of Appeals for the stay of a decision or order of an administrative agency pending judicial review, "shall ordinarily be made in the first instance to the agency". Prior to March 1, 1975, judicial review of the Commission's orders was appropriately sought before three-judge United States District Courts pursuant to the Urgent Deficiencies Act, 49 U.S.C. 2325 and there was no requirement that a stay of the Commission's decision be sought at the agency in the first instance. Now, however, judicial review of Commission orders has been elevated to the United States Courts of Appeals, and the rules of that court require that such a petition first be filed with the agency. Accordingly, the committee felt that the Section (g) is necessary to advise the bar of the procedure applicable to seeking this form of temporary relief.
	(3) Copies of petitions and replies. In cases in which it has been determined and announced that an issue of general transportation importance is involved, there shall be furnished for the use of the Commission the original and 14 copies of each petition filed under this section and of replies to such petitions. A like number of copies shall be furnished of petitions seeking a finding that the proceeding involves an issue of general transportation importance.	Section (g) governing petitions for procedural relief, including requests for extensions and modifications, is derived from present Rule 101(c) which provides that such relief can be sought "seasonably" and "informally by telegram". The imposition of the 5 day requirement in the proposal reflects an attempt by the committee to discourage such requests in order to reduce, whenever possible, the time required for processing a case. Additionally, the elimination of replies to such requests is recommended to achieve similar results particularly where the relief sought is procedural only, and does not involve a substantive agency determination.
	(g) Petitions for stay. A party may petition for stay of a decision, order or requirement pending a request for judicial review, for extension of the compliance date, for modification of the effective date or for similar procedural relief, stating reasons therefor. Such a petition shall be filed no less than five (5) working days in advance of the effective date, and no replies shall be entertained.	

PRESENT RULE

PROPOSED RULE

§1100.103 Administrative Appeal - Rail Proceedings

The rules in this section apply only to proceedings involving rail matters:

(a) Conclusiveness. The decision, order or requirement of the division or Commission will not be the subject of reconsideration or further proceedings except when the Commission, on its own motion or upon petition, determines that the proceeding involves a matter of general transportation importance, or that new evidence or changed circumstances exist which would materially affect the prior decision, order or requirement.

(b) Successive administrative appeals. A party shall not be permitted to file a second administrative appeal, except that (1) petitions for administrative review pursuant to paragraph (c) below, and (2) petitions for stay pursuant to paragraph (f) below shall be permitted.

(c) Petitions for administrative review. (1) Any party may file a petiton for administrative review of the decision, order, or requirement of the division or Commission, subject to the following requirements:

(i) That the petition shall detail in what respects the proceeding involves a matter of general transportation importance or new evidence or changed circumstances exist which would materially affect the prior decision, order or requirement, and include a request that the Commission make such determination.

(ii) That, to the extent further hearing, rehearing, reargument or reconsideration is sought, the petition shall detail in what respects such relief is requested and the reasons therefor. When in a petition filed under this section opportunity is sought to introduce evidence, the

COMMENT

Significantly, section (a) of Rule 103 eliminates additional review by the division in those instances where review is sought for the reason that an initial decision has been modified or revised. In the spirit of the RRRR Act of 1976, the committee believes that this second appeal to the same division is unnecessary and creates administrative delay. In all rail cases, administrative review of division or Commission decisions is discretionary with the agency and limited to instances where the Commission determines that issues of general transportation importance, or new evidence or changed circumstances exist materially affecting the prior decision.

Section (b) reflects the discussion above and enumerates the only circumstances under which a second administrative appeal will be permitted.

Section (c) governs the filing of "petitions for administrative" review as distinguished from "exceptions" and establishes the requirements as to content and form. In accord with current practice in administratively final matters and with the 4R Act, practitioners are clearly notified that a petition does not automatically stay the effect of the prior decision. The imposition of a page limitation for this second appeal parallels the practice in the Federal courts of encouraging brevity in appellate pleadings, and conforms to the proposal in Ex Parte No. 55 (Sub-No. 19).

Section (d) is in harmony with section 303(a) of the 4R Act. For general comments on this section, see the comment regarding proposed Rule 102(c), supra.

PRESENT RULE	PROPOSED RULE	COMMENT
	evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (iii) That the petition shall not exceed 10 pages in length, although a separate preface and summary of arguments not exceeding 3 pages may also accompany the petition. Replies shall be subject to the same requirements. (2) The filing of the petition itself shall not stay the effect of the prior decision, order or requirement. (d) Time for filing. Exceptions and petitions for administrative review with respect to any matter involving a common carrier by railroad shall be filed within 20 days after the date of service of the decision, order, or requirement to which it is directed, and within 30 days thereof for any other matter. For replies, see Rule 23. (e) Administrative finality. (1) The timely filing of exceptions shall stay the effect of an initial or tentative decision. (2) Unless otherwise provided, the Commission, on its own motion or upon petition, may stay the effect of a decision, order or requirement of the division or Commission. (f) Petitions for stay. A party may petition for stay of a decision, order or requirement pending a request for judicial review, for extension of the compliance date, for modification of the effective date or for similar procedural relief, stating the reasons therefor. Such a petition shall be filed no less than five working days in advance of the effective or compliance date, and no replies shall be entertained.	Section (e) of the proposed revision regarding the effect on the prior decision of filing exceptions or petitions for administrative review is derived from section 17(9) of the Act as revised by the 4R Act, and is not now included in any form under current Rule 101. The Committee felt that a clear expression of the staying effect of administrative appeals is sorely lacking in the present rules and is needed to alleviate confusion in this regard. Section (e) reflects the distinction between the effect on the prior decision of filing exceptions (now including appeals from employee boards in Rule 101(b), supra) and petitions. For comment on section (f) see comment regarding Rule 102(g)

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.102 Petitions not otherwise covered. When the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief, and stating the reasons therefor may be served and filed.	§1100.104 Petitions not otherwise covered. A party seeking relief not otherwise provided for by these rules may file a petition for such relief, stating reasons therefor. Petitions barred by any other rule of practice shall not be entertained.	The existing rule has been revised to reflect an editorial change to render it more readable. Additionally, the revised version includes an additional sentence to make it clear that the purpose of the rule is to provide a procedural remedy which, due to the particular circumstances involved, may not be available under any other rule. It is not to be invoked in order to circumvent the requirements of those rules. Thus, successive administrative appeals barred by Rules 101-103 would not be entertained under this provision.
	§1100.105 Application of the rules: Time limits - Proceedings involving common carriers by by railroad. In applying these rules to proceedings involving common carriers by railroad subject to Part I of the Interstate Commerce Act, the Commission will be governed by the time limits specified in section 17(9) of said Act, as set forth in Appendix G.	Rule 105 is a new provision that has been added to reflect the procedural limitations imposed upon the Commission in the Railroad Revitialization and Regulatory Reform Act of 1976 which was signed into law on February 5, 1976. The new rule limits application of the strict time limitations set out in Section 303 of that Act to proceedings involving railroads alone, as required by the bill, and does not extend those provisions across-the-board to motor or water carrier proceedings. The Committee believes that the Commission should allow itself an opportunity to study and experience the effect of the new requirements on a portion of the caseload (rail) before applying those procedures to all proceedings. A significant factor in limiting application of these procedures was the concern expressed regarding the number of staff available to implement the required procedures. If experience revealed that the entire caseload could be processed within the time limits set Rule can be easily amended.

PRESENT RULE	PROPOSED RULE	COMMENT
	SUB-PART B SPECIAL RULES OF PRACTICE	
	§ 1100.200 ~~Special~~ Rules of practice governing procedure in certain suspension and fourth-section matters.	
	(a) The proceedings of the ~~Board of Suspension and the Fourth Section Board~~ Suspension and Fourth Section Board shall be informal. No transcription of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.	Revisions to Rule 200 to reflect the correct title of the Board, to delete outdated material, to reflect that Division 2 will not consider any new matter in an appeal made under Rule 200(c), and to conform to the more limited appellate review created by the 4-R Act.
	(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the orders:	
	(1) ~~Board~~ of Suspension and Fourth Section Board, ~~(2) Fourth Section Board,~~	
	~~(3)~~ (2) of Appellate Division 2 reversing, changing, or modifying a previous determination of an employee board in a non-rail matter, and	
	~~(4)~~ (3) of Division 2 suspending schedules or granting or denying fourth-section relief prior to hearing in proceedings not subject to a prior determination by an employee board, but only in non-rail matters.	
	~~Except as to said subparagraph (4) of this paragraph, respecting which an original and 14 copies are required,~~ The original and six copies of every pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's ~~general~~ rules of practice.	
	(c) When the ~~Board of~~ Suspension and Fourth Section Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by	

PRESENT RULE	PROPOSED RULE	COMMENT
	any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question. For the purposes of this section, a work-day shall be considered any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section.) Petitions submitted under this section shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m., Local Daylight Saving Time if that time is observed in the District of Columbia). Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected~~, except in unusual circumstances,~~ to rely wholly on the information previously filed with the ~~Board of~~ Suspension and Fourth Section Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request shall contain the following prefatory statement: "This matter requires expedited handling under Rule 200 of the Commission's ~~Special~~ Rules of Practice." A petition not timely filed shall be rejected by the Secretary.	

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.225 ~~Special~~ Rules of practice governing the procedure of the Motor Carrier Board, the Finance Board,[1] the Operations Boards, the Special Permission Board, the Released Rates Board, ~~the Operating Rights Board,~~ and the Tariff Rules Board.	Revised to reflect the abolition of the Operating Rights Board and to delete the words special and general from the Rules of Practice.
	(a) The proceedings of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, ~~the Operating Rights Board,~~ and the Tariff Rules Board shall be informal. No transcript of such proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.	
	(b) A petition for reconsideration of an order of ~~one of the following boards may be filed by any interested person:~~	
	~~(1) The Motor Carrier Board, an Operations Board, the Special Permission Board, the Released Rates Board, or the Tariff Rules Board; or~~	
	~~(2) The Operating Rights Board only with respect to matters arising pursuant to the Commission's deviation rules as set out in Part 1042 of this chapter.~~	
	the Motor Carrier Board, the Operations Boards, the Special Permission Board, the Released Rates Board, or the Tariff Rules Board may be filed by any interested person.	The footnote currently part of Rule 225 is deleted as unnecessary.
	(c) A petition for reconsideration of ~~the~~ a ~~Operating Rights Board, except as provided in paragraph (b) of this section, and the~~ Finance Board decision may be filed only by a party to the proceeding.	
	(d) A petition for reconsideration pursuant to paragraphs (b) and (c) of this section and reply thereto will be governed by the Commission's ~~general~~ rules of practice, except as provided in paragraph (e), (f), and (g) of this section.	

[1] ~~The general rules of practice apply to the procedure of all employee boards except to the extent specifically provided for in Rules 200 and 225.~~

PRESENT RULE	PROPOSED RULE	COMMENT
(e) The original and six copies of every pleading, document, or paper permitted or required to be filed under this section, shall be furnished for the use of the Commission.	No change.	
	(f) A petition seeking reconsideration of an order of the Motor Carrier Board entered under section 210a(a) or 311(b) of the ~~Interstate Commerce~~ act must be filed within 20 days after the date of service of the order. Within 20 days after the filing of such petition with the Commission any interested person may file and serve a reply thereto.	Editorial change.
(g) A petition seeking reconsideration of an affirmative order of the Motor Carrier Board entered pursuant to the rules and regulations governing transfers of property brokers' licenses, Part 1045 of this chapter, passenger brokers' licenses, Part 1133 of this chapter, motor carrier operating rights, Part 1132 of this chapter, water carrier operating rights, Part 1141 of this chapter, and freight forwarder permits, Part 1151 of this chapter, must be filed within 20 days following publication of a synopsis of such order in the FEDERAL REGISTER. In such a petition the matters claimed to have been erroneously decided and the alleged errors must be specified with particularity. If the petition contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted in affidavit form. Within 20 days after the final date for filing of such petitions with the Commission, any interested person may file and serve a reply thereto.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.240 Rules governing ~~notice of filing of~~ applications by motor carriers of property or passengers under sections 5(2) and 210a(b) of the Interstate Commerce Act. ~~and certain other procedural matters with respect thereto.~~	To eliminate surplus language.
	(a) Scope of rules. These rules govern the filing and handling of (1) applications under section 5(2) of the act respecting control, lease, and unification of operating rights and properties of motor carriers of property or passengers, and (2) applications for approval under section 210a(b) of the act of the temporary operation of motor carrier properties sought to be acquired in an application under section 5(2) of the act. Except as otherwise herein provided, the ~~general rules of practice shall apply.~~ general applicability shall govern.	To conform with the terminology proposed in Rule 1(b) and the title of SUBPART A", RULES OF GENERAL APPLICABILITY
(2) If applicants propose that any portion of the operating rights involved in the transaction be canceled or restricted, such proposal will be included in the summary. (3) The summary will state whether an application has or has not been filed for temporary authority under section 210a(b) of the act. (4) No notice by applicants to interested persons is required, except that applicants are not relieved from the obligation to file copies of applications with Governors, State Boards, and Regional Directors of the Commission's Bureau of Operations as may be required by the prescribed form of application, and except as hereinafter provided in paragraph (d)(3) of this section. (5) Except for good cause shown, amendments to applications which broaden	(b) Notice ~~to interested persons.~~ (1) Notice of the filing of applications under section 5(2) will be given by the publication of a summary of the authority sought in the FEDERAL REGISTER. ~~Such~~ The ~~summaries~~ summary will be prepared by the Commission, ~~and it~~ but applicants shall be ~~the responsibility~~ responsible ~~of applicants~~ promptly to advise the Commission if the summary does not properly describe the authority sought.	For clarity.

PRESENT RULE	PROPOSED RULE	COMMENT
the scope of the proposed transaction will not be allowed if tendered after notice of the filing of an application has been published in the Federal Register. Restrictive amendments may be submitted at any time, but if tendered after such publication, they may be allowed only in the discretion of the Commission, or by the hearing officer if the matter is assigned for hearing or prehearing conference. (c) Protests and requests for hearing under section 5(2). (1) Protests to the granting of an application under section 5(2) of the act shall be filed with the Commission within 30 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. A protest filed under these rules shall be served upon applicants' representatives named in the notice of filing published in the FEDERAL REGISTER. Unless otherwise specified in the notice, the original and one copy of the protest shall be filed with the Commission. Protests not in reasonable compliance with the requirements of this section may be rejected in the discretion of the Commission. (2) Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. (3) A protest against an application shall set forth specifically the grounds upon which it is made and the protestant's interest in the proceeding, shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally, (4) Any request for an oral hearing shall be supported by a specific explanation as to why the evidence to be presented cannot reasonably be submitted in the form of affidavits, and shall set forth the approximate number of witnesses who would be presented by the protestant, an estimate of the hearing time required for such presentation, and whether a hearing at Washington, D. C., would be objectionable, and, if so, what place would be more suitable; and protestant shall certify in its protest that, if an oral hearing is held, it will appear and present evidence.	No change.	
	(5) Where a person has a limited interest in an application, which possibly could be eliminated by a restrictive amendment of the proposed transaction, such person may also include in a protest filed in conformity with this paragraph an offer to withdraw the protest	Subsection (c)(5) is modified to reflect that acceptance of an amendment by applicant is not and can not be binding on the Commission.

PRESENT RULE	PROPOSED RULE	COMMENT
	in the event of acceptance of such amendment by applicants, and the Commission.	
(6) Except as provided in subparagraph (5) of this paragraph, or for good cause shown, the failure of any person filing a protest to an application to appear at a hearing scheduled thereon shall be construed as a waiver of his right to participate further in the proceeding; such person shall no longer be considered as a party to the proceeding, and such person and any representative responsible for his participation in the proceeding may be subject to censure for failure to appear.	No change.	
(7) Any interested person, not a protestant, desiring to receive notice of the time and place of any hearing, conference, or other proceedings shall notify the Commission by telegram or letter within 30 days from the date of the publication of the notice of the filing of the application in the FEDERAL REGISTER.		
(d) Procedure to be followed under section 210a(b). (1) Subject to subparagraph (4) of this paragraph, protests to the granting of an application for temporary authority under section 210a(b) may be filed by persons who oppose, or intend seasonably to oppose, the application under section 5(2).		
(2) The protest to temporary approval may be by telegram, letter, or other writing, of which only an original need be filed, or may be included in a protest filed under paragraph (c) of this section. It should state the interest of the protestant and the grounds for the position taken in opposition to temporary approval, and should show service upon applicants' representatives.		
(3) If an application for temporary authority is filed in a contested proceeding after the period for filing protests under paragraph (c) of this section has expired, applicants are required to furnish copies of such application to protestants. Notice will not thereafter be given by publication in the FEDERAL REGISTER.		
(4) Applications for temporary authority under section 210a(b) will be disposed of without hearings or other proceedings, and without necessarily awaiting expiration of the period allowed for protests.		
(5) Unless circumstances requiring immediate action are shown, applications for temporary authority under		

PRESENT RULE	PROPOSED RULE	COMMENT
section 210a(b) will not be disposed of before 10 days after the date the notice of filing of the application under section 5(2) is published in the FEDERAL REGISTER, or 10 days after the date an amended notice is published, if the application for temporary authority is filed within 30 days after the date of initial publication; or, if the application for temporary authority is filed after expiration of the 30 days from the date of initial publication of notice of the section 5 application, and protests have been filed, copies of the temporary authority application shall be served on protestants, and action will not be taken in less than 20 days from the date of such service, unless circumstances require immediate action. (e) Hearing or other procedures under section 5(2). (1) The Commission will determine whether an assignment for oral hearing should be made, after notice to interested persons of the filing of the application has been published in the FEDERAL REGISTER and the period for filing protests has expired. At or prior to such time, applicants who do not intend to prosecute their application should promptly request dismissal thereof. (2) Applicants who believe their application is not susceptible of handling without oral hearing may request oral hearing when the application is filed, or later, if additional evidence which cannot reasonably be submitted in the form of affidavits is required. (3) If applicants request an oral hearing and show that such hearing is necessary, or if the proceeding is contested, applicants shall advise the approximate number of witnesses who will be presented, furnish an estimate of the hearing time required for such presentation, and state whether a hearing at Washington, D.C., would be objectionable, and, if so, what place would be more suitable. (f) Notice of hearing, conference or other proceedings. (1) Notice of the time and place of any hearing, conference, or other proceedings will be given to applicants' representatives, applicants, protestants, and other interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
(2) A request by any party for a change in the time or place of an assigned hearing must set forth good and sufficient cause for the action requested, must be in writing and filed with the Commission not less than 10 days before the assigned hearing date, except in emergency circumstances, and must be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission. Where such requests are filed less than 10 days before the date of hearing, the petitioning party shall state the reasons for his failure to make such request within the prescribed time. (3) The applicants' representatives, protestants, and those who request notice of changes in time or place of hearing, conference, or other proceedings will be informed of such changes if notice is given by mail. If telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who request telegraphic notice at their expense. (4) Upon receipt of an order or notice of a hearing assignment, applicants who no longer intend to proceed to hearing shall immediately and jointly request dismissal of their application, with appropriate notification to all protestants, failing which applicants or their representatives, or both, may be subject to censure.		
	(g) Intervention. Rule 73 relating to participation without intervention is inapplicable to applications subject to this section. ~~except with respect to persons seeking to intervene in support.~~ No person who fails to file a protest as provided in these rules will be permitted to intervene in opposition except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72.	Rule 73, as proposed, would not permit participation without intervention under any circumstances in cases under §5(2) or §210a(b). See proposed rules 72 and 73

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.245 ~~Special~~ Rules governing ~~procedures for the issuance to single State common carriers, by motor vehicle~~ of Certificates of Registration under section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962, authorizing motor common carrier operations in interstate and foreign commerce, and certain other procedural matters with respect thereto.~~ (a) Scope of ~~special~~ rules. These ~~special~~ rules govern (1) the matter of giving notice to interested persons, by publication in the FEDERAL REGISTER, of the filing of applications for State certificates of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, in connection with which the applicant, also desires to engage in transportation in interstate and foreign commerce under the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, and certain related matters. (2) The filing with the Interstate Commerce Commission of applications for Certificates of Registration based upon intrastate certificates of public convenience and necessity issued by a State Commission which contain a concurrent finding that the public convenience and necessity require operations in interstate and foreign commerce in accordance with the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act ~~as amended October 15, 1962~~. (3) The filing with, and the handling by, the Interstate Commerce Commission of petitions for reconsideration of the decisions of State Commissions, made pursuant to the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, finding that	To eliminate unnecessary words.

the public convenience and necessity require motor common carrier operations in the transportation of property or passengers, in interstate and foreign commerce, which do not exceed the scope of the concurrently authorized motor common carrier operations in intrastate commerce contained in certificates of public convenience and necessity issued by such State Commissions. Except as otherwise herein provided, the ~~general rules of practice shall apply.~~ rules of general applicability shall govern.

(b) Notice to interested persons of the filing of State Applications. In accordance with such rules and regulations as may be prescribed by the State Commissions, any person seeking an intrastate certificate of public convenience and necessity, who or which also desires to engage in transportation in interstate and foreign commerce pursuant to section 206(a)(6) of the ~~Interstate Commerce~~ Act, ~~amended October 15, 1962~~, shall so notify the State Commission with which the intrastate application is filed at the time of filing the intrastate application. Notice to interested persons of the filing of such an application, and of the applicant's desire also to engage in transportation in interstate and foreign commerce, shall be given by the publication in the FEDERAL REGISTER of a summary of the authority sought as prepared by the State Commission and transmitted to the Interstate Commerce Commission at Washington, D.C. (See approved Form No. 7 in Appendix B). In order to afford interested persons a reasonable opportunity to be heard, such summaries must be forwarded to the Interstate Commerce Commission sufficiently in advance of any hearings that

may be scheduled on the application so noticed. Except as otherwise may be required by the State Commission, no other notice by applicant to interested persons is necessary.

(c) Conduct of, and participation in, State Commission application proceedings. Subject to the requirement of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, that interested persons be afforded a reasonable opportunity to be heard, the rules and regulations of the State Commission with which the intrastate application is filed shall govern the conduct of, and participation in, any State hearings or other State Commission proceedings that may be held with respect to such application, notice of the filing of which has been published in the FEDERAL REGISTER pursuant to paragraph (b) of this section. Protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission. The record made in the State Commission proceeding shall be made available to the parties to such proceeding upon payment of such costs as may be fixed or prescribed by the State Commission.

(d) Applications to the Interstate Commerce Commission for Certificates of Registration. (1) Within 30 days after service by the State Commission of a certificate of public convenience and necessity authorizing motor common carrier operations in intrastate commerce and containing the recitations required by section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, the holder of such State certificate shall file with the Interstate

PRESENT RULE	PROPOSED RULE	COMMENT
	Commerce Commission at Washington, D. C., an Application for Motor Carrier Certificate of Registration, Form BOR-100, §1003.1 of this chapter. Such application shall be prepared in accordance with and contain all information called for in the form of application and the instructions thereto. Copies of such application shall be furnished in such number, and be filed and served in the manner and upon the persons specified in the form of application.	

PRESENT RULE	PROPOSED RULE	COMMENT
(2) Upon receipt, an application for a Certificate of Registration will be assigned a docket number; and thereafter notice of the date of filing of the application and the docket number assigned thereto will be transmitted by the Interstate Commerce Commission to the applicant and those persons upon whom copies of the application were served by the applicant as specified in the form of application; and thenceforth all further proceedings therein before the Interstate Commerce Commission will be under such docket designation.	No Change.	
	(3) Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, shall be deemed to be a party in the corresponding application proceeding instituted in accordance with subparagraph (1) of this paragraph. No other person will be permitted to participate in such proceeding except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72 of the Commission's ~~general~~ rules of practice.	Changed for consistency.
(4) Except for good cause shown, and upon leave granted, failure to file an application for a Certificate of Registration within the 30-day time period specified in subparagraph (1) of this paragraph shall be construed as a waiver of any right thereafter to file for and obtain such a certificate.	No Change	
(e) Petitions for reconsideration of State Commission decisions made the subject of applications for Certificates of Registration-(1) Parties. Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, may file with the Interstate Commerce Commission at Washington, D.C., a petition seeking reconsideration of the State Commission decision which is the basis for an application for a Certificate of Registration.		

PRESENT RULE	PROPOSED RULE	COMMENT
	(2) Filing requirements. Except for good cause shown, and upon leave granted, petitions under this rule shall be filed within 30 days after the date of the filing of an application with the Interstate Commerce Commission pursuant to paragraph (d) (1) of this section for a Certificate of Registration authorizing motor common carrier operations in interstate and foreign commerce under the provisions of section 206(a)(6) of the ~~Interstate Commerce act, as amended October 15, 1962~~, and such petition shall be filed under the docket number assigned to the related application proceeding.	To conform with the terminology in proposed rule 1(c).
	(3) Contents. Any such petition shall specify with particularity the facts, matters, and arguments relied upon; and unless a copy of such record already has been submitted by another petitioner, such petition shall be accompanied by a certified copy of the complete record made before the State Commission, including a transcript of any testimony taken and any exhibits filed before such State Commission, such copy to be provided by, and at the expense of, the petitioner. The petition shall conform in all respects to requirement of Rules 15 and 17 of this Commission's ~~general~~ rules of practice. The original and 6 copies of the petition, and one certified copy of the record made before the State Commission, shall be furnished for the use of the Interstate Commerce Commission.	
(4) Replies to petitions. A reply to a petition filed under these rules may be filed and served within 20 days after the final date for filing such petitions. The original and 6 copies of the reply shall be furnished for the use of the Interstate Commerce Commission.		
	(5) Service of petitions and replies. Copies of each petition and reply filed under these rules shall be served on the State Commission involved and on all other parties to the State Commission proceeding in accordance with the requirements of Rule 22 of the Commission's ~~general~~ rules of practice.	To conform with the terminology in proposed rule 1(c)

PRESENT RULES	PROPOSED RULES	COMMENT
(6) Effect of petitions. The filing under these rules of a petition for reconsideration shall not preclude or affect the institution of the motor carrier operations in intrastate commerce authorized by the State certificate; and failure seasonably to file a petition for reconsideration under these rules will be construed as a waiver of opposition and further participation in the related application proceeding for a Certificate of Registration.		
(f) Disposition of Applications for Certificates of Registration and related petitions for reconsideration. Applications for Certificates of Registration and related petitions for reconsideration filed under these rules will be handled together and processed in a single proceeding and will be disposed of by the division of the Interstate Commerce Commission to which these matters may be assigned, acting as an Appellate Division. Except as the Interstate Commerce Commission may, in its descretion, otherwise direct, a decision and order issued by the Appellate Division disposing of such an application and petition will be administratively final and petitions by any of the parties for reconsideration of such Division's actions will not be entertained.	No change	
(g) Disposition of Unopposed Applications for Certificates of Registration. Where the State Commission proceeding which resulted in the issuance of the State Certificate sought to be made the basis of a Certificate of Registration was unopposed, or where petitions for reconsideration of the finding of the State Commission that the public convenience and necessity require operations in interstate and foreign commerce are not seasonably filed, the application for a Certificate of Registration will be disposed of in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings.		

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.246 ~~Special~~ Rules pertaining to proceedings for the discontinuance or change of train or ferry service	Change in title for the purpose of conformity.
	No change.	
(a) Scope of special rules. These special rules govern procedure before the Commission in proceedings commenced by carriers subject to part I of the Interstate Commerce Act, under and pursuant to the provisions of section 13a of said Act, upon a notice under paragraph (1) of said section or by a petition under paragraph (2) thereof, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.		
	(b) General rules otherwise applicable. Except as ~~provided otherwise in these~~ special rules, proceedings upon notices and petitions filed under section 13a shall be governed by the ~~Commission's general rules of practice.~~ rules of general applicability.	For Conformity with the term proposed with rule 1(b) and the title of SUBPART A, RULES OF GENERAL APPLICABILITY
(c) Notices and petitions by carriers. A notice filed under paragraph (1), and a petition under paragraph (2), of said section 13a shall be prepared in accordance with and contain the information called for by rules and regulations then in force with respect to such a notice or petition. See Part 1122 of this chapter.		
(d) Notice to interested parties. Notice of the institution of any investigation or of the time and place of any hearing, conference, or other proceeding will be given by the Commission to the carrier or carriers involved, the Governor and appropriate regulatory agency of each State in which the train or ferry affected is operated, protestants, and other interested parties of record, by mailing to them the order or notice instituting the investigation or assigning the hearing, conference, or other proceeding. Similar notice will be given to the same parties of changes in the time or place of hearing, conference, or other proceeding when time permits notice by mail; but, if telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who have requested telegraphic notice at their expense.		
(e) Participation at hearings without intervention. In an investigation proceeding under section 13a(1), or in pro-		

PRESENT RULE	PROPOSED RULE	COMMENT
ceedings upon a petition filed under section 13a(2), an appearance may be entered at the hearing without filing a petition in intervention or other pleading, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.	(f) Complaints and protests. When a notice is filed with the Commission pursuant to ~~the provisions of~~ section 13a(1), proposing to discontinue or change, in whole or in part, the operation or service of any train or ferry ~~from~~ between a point in one State ~~to~~ and a point in any other State or in the District of Columbia, ~~or from a point in the District of Columbia to a point in any State~~, any interested person opposed to such proposal may ~~make his opposition known by filing~~ file with the Commission a complaint or protest. ~~The complaint or protest may be~~ by telegram, letter, or other writing, of which only an original need be filed. Service ~~of copies~~ thereof upon the carrier proposing the discontinuance or change is not required. A complaint or protest should identify ~~the proceeding by reference to the name of~~ the carrier and ~~to~~ the particular train or ferry involved, and should state the interest of the complainant or protestant and the grounds for the ~~position taken in~~ opposition. ~~to the proposal. In order to be considered by the Commission,~~ The complaint or protest must be filed with the Commission in Washington, D. C., not later than 15 days before the date when the carrier proposes to make effective the ~~subject~~ discontinuance or change. ~~Replies to a protest or complaint are not contemplated,~~ and The failure to reply will not be construed as an admission of any allegations contained ~~therein~~ the protest or complaint.	To eliminate unnecessary words

PRESENT RULE	PROPOSED RULE	COMMENT
(g) Petitions for reconsideration of orders instituting an investigation. Petitions for reconsideration of an order instituting an investigation in relation to a proposed change or discontinuance may be filed by the carrier or carriers affected within 15 days after the date of service of the order. An original and 6 copies shall be furnished for the use of the Commission, and copies thereof shall be served upon the persons to whom copies of the notice of the carrier were required to be mailed by the rules and regulations prescribed by the Commission. See §1122.5 of this chapter. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 15 days after the filing of such petition with the Commission.	(h) Reconsideration of decision not to institute an investigation. A decision not to institute an investigation concerning a proposed discontinuance or change of service may be made the subject of a petition for reconsideration by any interested person, provided the petition reaches the Commission at least two workdays prior to the effective date of the proposed discontinuance or change of service. If an order is desired requiring continuance of the service pending hearing and decision upon investigation, the petition should reach the Commission at least 12 days before the discontinuance or change is scheduled to become effective. ~~two-workdays before the Commission's authority to enter such an order will expire.~~ (Under ~~the provisions of~~ section 13a(1) of the act, an order of the Commission requiring continuance of the operation or service, pending hearing and decision in an investigation, must be served upon the carrier or carriers affected thereby at least 10 days before a discontinuance or change would otherwise become effective.) For the purposes of this section, a workday shall be considered any day except Saturday, Sunday, or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a workday within the meaning of this section.)	A change in the interest of clarity and elimination of the footnote.

PRESENT RULE	PROPOSED RULE	COMMENT
	Petitions submitted under this paragraph shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m. Local Daylight Saving Time if that time is observed in the District of Columbia.) Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. The request for reconsideration shall contain the following prefatory statement: "This matter requires expedited handling under Rule 246 of the Commission's ~~special~~ rules of practice." If in writing, an original and six copies of the petition shall be furnished for the use of the Commission. Telegraphic notice or its equivalent must be given by the petitioner to the carrier or carriers affected, and certification that such notice has been given must accompany the request for reconsideration. Action may be taken upon the petition without awaiting a reply, but if a reply is received prior to a decision upon the petition it will be given consideration. A petition not timely filed will be rejected by the Secretary.	
	(i) Protests. ~~As the applicable statute requires~~ Section 13a(2) requires this Commission to conduct a full hearing in the State involved, before ~~the Commission~~ it may grant a petition filed thereunder for authority to discontinue or change the operation or service of any train or ferry operated wholly within the boundaries of ~~a single~~ that State. It is not necessary, therefore, that persons opposed to such a petition file a protest in order to obtain a hearing; ~~on the proposal,~~ but interested persons may file protests by complying with Rule 40 or they may register their opposition by letter addressed to the Secretary, Interstate Commerce Commission, Washington, D. C. 20423, for the purpose of receiving notice of the time and place of the hearing. ~~when assigned.~~ See paragraph (e) of this section in regard to participation at hearing.	For clarification.

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.247 ~~Special~~ Rules governing ~~notice of filing of~~ applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209 and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 419 of the ~~Interstate Commerce~~ act. ~~and certain other procedural matters with respect thereto~~.	Surplusage deleted from title
	(a) Scope and applicability of special rules--(1) Scope. These special rules govern the filing and handling pursuant to the provisions of the ~~Interstate Commerce~~ act of (i) applications for certificates, permits, and licenses respecting the transportation of property or passengers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209, and 211, (ii) applications for certificates, permits, and exemptions respecting the water transportation of property or passengers under sections 302(e), 303, and 309, and (iii) applications for permits to operate as freight forwarders and for certificates of abandonment under section 410. Except as otherwise herein provided, the ~~general~~ rules of general applicability shall apply.	To conform with the terminology of proposed rule 1(b) in the title of SUBPART A, RULES OF GENERAL APPLICABILITY
	(2) Applicability. Except as otherwise provided herein these special rules shall apply to all applications enumerated in subparagraph (1) of this paragraph and filed with the Commission on and after May 20, 1966, and to such of those applications filed prior to that time as the Commission may designate by appropriate publication in the Federal Register.	
	(b) Applications.--(1) Form and content. An application filed with the Commission under these special rules shall be prepared in accord with and contain the information called for in the form of application prescribed by the Commission or in instructions which may have been issued by the Commission with respect to the filing of such an application. An application for a certificate, permit, or license as defined in subparagraph (a)(1) must be accompanied by certifications of support on the prescribed form for each individual, corporation or partnership known to the applicant upon whose support	

PRESENT RULE	PROPOSED RULE	COMMENT
applicant intends to rely. Except for good cause shown, no application will be accepted for filing unless it is accompanied by certifications as herein required. Upon request by any party, the applicant shall furnish such party with copies of all certifications filed with the application. If, subsequent to the filing of an application, additional witnesses become known to the applicant, applicant shall file a certification for each such witness with the Commission and shall concurrently serve copies thereof upon all parties of record. The total number of witnesses subject to this rule whose testimony is offered in support of the application may not exceed twice the number for whom certifications were filed with the application, whether the case is designated for oral hearing or for modified procedure. In cases designated for oral hearing, certifications of additional witnesses as provided above must be filed and served not later than 30 days prior to the date assigned for commencement of hearing: Provided, That, the presiding officer may authorize additional certifications for witnesses to be presented at a continued hearing to be filed and served not later than 30 days prior to the date of the continued hearing. No testimony will be received from witnesses for whom such certifications have not been timely received. Provided, however, that the provisions of this paragraph limiting the total number of witnesses and requiring certifications for subsequently discovered witnesses shall not be applicable to applications to transport passengers, and that certifications for subsequently discovered witnesses shall not be required in cases handled under modified procedure except when reassigned for oral hearing.	No Change.	
(2) Copies and service. Copies of an application filed under these special rules shall be furnished in such number and shall be filed and served in the manner and upon the persons specified in the form or instructions.		

PRESENT RULE	PROPOSED RULE	COMMENT
(3) Requests for handling applications without oral hearing. An applicant who believes its application is susceptible of handling without oral hearing may request such handling when the application is filed. If such a request is made at that time, the applicant shall submit with its application original verified statements of the facts to which its witnesses would testify at an oral hearing if one were held, together with one copy thereof which need not be verified. Applicant shall furnish copies of its verified statements to interested persons upon request from such interested persons.		
(c) Notice to interested persons. (1) Notice of the filing of applications to competitors and other interested persons will be given by the publication of a summary of the authority sought in the FEDERAL REGISTER. Such summary will be prepared by the Commission, and it shall be the responsibility of applicant promptly to advise the Commission		

if the summary does not properly describe the authority sought. No other notice by applicants to interested persons is required, except that applicants are not relieved from the obligation to file copies of applications with Governors, State Boards, and Regional Directors of the Commission's Bureau of Operations as may be required by the prescribed form of the application.

(2) Amendments. Except for good cause shown, amendments to applications which broaden the scope of the proposed operations will not be allowed if tendered after notice of the filing of an application has been published in the FEDERAL REGISTER.

Restrictive amendments acceptable to the Commission may be submitted at any time: Provided, That, except as hereinafter provided, in cases assigned for oral hearing amendments must be received by the Commission not later than (1) 30 days after the service date of a notice that the case has been assigned for oral hearing, or (2) the date of prehearing conference assigned to consider such amendments. Restrictive amendments submitted after such date may be considered by the Commission or presiding officer only if exceptional reason is shown why the amendment could not have been timely filed. Prehearing conferences assigned for the consideration of amendments shall be subject to the provisions of subparagraph (d)(6) of this rule respecting appearance at hearings.

(d) Protests and request for hearing. (1) Protests to the granting of an application shall be filed with the Commission within 30 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. A protest filed under these rules shall certify that it has been served upon applicant's representative (or applicant, if no practitioner representing him is named in the notice of filing published in the FEDERAL REGISTER). Unless otherwise specified in the published notice, the original and one copy of the protest shall be filed with the Commission. Protests

No Change.

PRESENT RULE	PROPOSED RULE	COMMENT
not in reasonable compliance with the requirements of these rules may be rejected in the discretion of the Commission. (2) Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. (3) A protest against any application shall set forth specifically the grounds upon which it is made and contain a detailed statement of the protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method (whether by joinder, interline, or other means) by which protestant would use such authority to provide all or part of the service proposed), shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests phrased in general terms and not complying with these specifications may be rejected. (4) Any request for an oral hearing shall be supported by a specific explanation as to why the evidence to be presented cannot reasonably be submitted in the form of affidavits, and shall set forth the number of witnesses which would be presented by the protestant and an estimate of the hearing time required for such presentation. Protests embracing a request for oral hearing shall contain the following certification without further qualification: The undersigned hereby certifies that, if an oral hearing is held, protestant(s) will appear and present evidence of protestant(s) own operations and particular interests(s) in the outcome of this application unless this application is amended so as to eliminate the interest(s) of protestant(s) as set forth in this protest. (5) Where a person has a limited interest in an application, which possibly could be eliminated by a restrictive amendment to the application, which amendment must be acceptable to the Commission, it may also include in a protest	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
filed in conformity with this paragraph an offer to withdraw the protest in the event of acceptance by applicant and the Commission of such amendment. (6) Except where a restrictive amendment has been made as provided in subparagraph (5) of this paragraph, or for good cause shown, the failure of any person filing a protest to an application to appear at a hearing scheduled thereon shall be construed as a waiver of its right to participate further in the proceeding; such person shall no longer be considered as a party to the proceeding, and it and any representative responsible for its participation in the proceeding may be subject to censure for failure to appear. In addition, the mere appearance of protestant without the presentation of evidence of protestant's own operations and particular interest in the applicatibn may, in the absence of good cause shown, subject protestant and its representative to similar censure. (7) An interested person, not a protestant, desiring to receive notice of the time and place of any hearing, conference, or other proceedings shall notify the Commission by telegram or letter (original and one copy) within 30 days from the date of the publication of the notice of the filing of the application in the FEDERAL REGISTER. (8) A person (carrier) who does not file a protest as required by the regulations in this part, or who otherwise fails to remain a proper party to an application proceeding filed under the regulations in this part (by withdrawal of a previously filed protest, by failure to file verified statements in opposition as required by an appropriate order, by failure to appear at a scheduled oral hearing, or by other means), and who is not granted leave to intervene pursuant to the provisions of paragraph (h) of this section, except for good cause shown, may not personally, or through a representative, appear as a witness for a party protestant, except as provided hereafter. This provision shall not preclude the filing of a proper joint protest on behalf of several opposing carriers, or the presentation of evidence of service by bona fide connecting carriers through a duly qualified protestant, as to the nature and	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
extent of their joint services, or other probative evidence, provided the party protestant's original protest contains a clear statement that its opposition is based, in part at least, upon a transportation service performed by it jointly with connecting carriers.	No change.	
(e) Hearing or other procedure to be followed--(1) Determination. The Commission will determine whether an assignment for oral hearing should be made, after notice to interested persons of the filing of the application has been published in the FEDERAL REGISTER and the period for filing protests has expired. At or prior to such time, any applicant who does not intend to prosecute its application should promptly request dismissal thereof.		
(2) Uncontested proceedings. Proceedings in which no protests are filed within 30 days after publication of notice in the FEDERAL REGISTER, and which are not assigned for oral hearing, will be determined on the basis of verified statements submitted by applicant. Where not submitted previously along with the application as provided in paragraph (b)(3) of this section, such statements, by order, will be required to be filed by the applicant with the Commission within the time prescribed in said order, failing which the application may be summarily dismissed for want of prosecution.		
	(3) Contested proceedings. In those contested proceedings which the Commission determines that assignment of an application for oral hearing is unnecessary, thereafter the procedure shall be in accordance with Rules 45(b), 46(b), and 47-54, inclusive, of the general rules of practice, except that only the original and one copy of any statement made pursuant to Rule 51 need be filed with the Commission. All other contested proceedings which are subject to these rules will be assigned for oral hearing, unless other procedures are ordered.	Modified for conformity.
(f) Failure to prosecute applications. An applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof. Failure to prosecute an application under procedures ordered by the Commission will result in dismissal	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
thereof. Submission of a request for dismissal of an application later than 15 calendar days after the service date of a notice setting it for oral hearing, or failure by applicant to appear and prosecute the application at such hearing will result in dismissal thereof and will bar the filing of any application for the same or any part of the same authority by the same applicant for a period of 1 year after the date of the dismissal order except upon a petition showing good cause why this rule should be waived. Such petition shall be served upon all protestants to the prior application. (g) Notice of hearing, conference or other proceedings--(1) Initial assignment. Notice of the time and place of any hearing, conference, or other proceedings will be given to applicant's representative, applicant, protestants, and other interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure. (2) Assignment of an application for hearing concurrently with notice of its filing. For the convenience of the Commission in handling applications related to one or more applications which already have been noticed in the FEDERAL REGISTER, when, in the Commission's discretion, the public interest would be served, an application may be concurrently noticed and assigned for hearing provided appropriate publication in the FEDERAL REGISTER can be made at least 1 week prior to the assigned date of hearing. Where such action is taken, and regardless of any prior publication of the application, any interested person may, without filing a protest prior to the assigned hearing, appear at the hearing in opposition to the application so assigned and become a party and be entitled to participate in that proceeding. (3) Requests for change. A request by any party for a change in the time or place of an assigned hearing must set forth good and sufficient cause for the action requested, must be in writing and filed with the Commission not less than 10 days before the assigned hearing date, except in emergency circumstances, and must be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission. Where	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
such requests are filed less than 10 days before the date of hearing, the petitioning party shall state the reasons for his failure to make such request within the prescribed 10 days.		
(4) Notice of changes. The applicant's representative (or applicant if it has no representative), protestants, and those who request notice of changes in time or place of hearing, conference, or other proceeding will be informed of such changes if notice is given by mail. If telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who request telegraphic notice at their expense.	No change	
	(h) Intervention. Rule 73 relating to participation without intervention is inapplicable to applications subject to this section, ~~except with respect to these persons seeking to intervene in support.~~ No person who fails to file a protest as provided in these rules will be permitted to intervene in opposition in a proceeding except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72.	Proposed changes to Rule 73 prohibit participation without intervention. See also Rule 72.
	~~(i) Drafting of recommended order and report by prevailing party.--Applications in which the hearing officer can announce his decision, either (1) on the record after the close of the taking of testimony or (2) by appropriate notification to the parties after the filing of briefs, may be made the subject of a report and recommended order, prepared by the party or parties in whose favor the hearing officer decides, within a period specified by the hearing officer. The hearing office will make such changes as he considers appropriate in the draft prepared for him.~~	The provisions are covered entirely by the proposed Rule 70.
Policy statement begins on page 40.5 of the April 1, 1975 addition of the General Rules of Practice.	~~[32 F.R. 20066, Dec. 20, 1967, as amended at 33 F.R. 9259, June 22, 1968]~~	To eliminate unnecessary words.

PRESENT RULE	PROPOSED RULE	COMMENT
	Note: A General Policy Statement concerning Motor Carrier Licensing Procedures (Ex Parte No. 55)(was published May 3, 1966 at 31 FR 6600, Since the policy remains pertinent, the substance of that statement is repeated here, with modifications to update the factual information.	This sets out the basis for and procedures under modified procedure. It is needed as much now as in 1966, when modified procedure was first being emphasized. This statement is substantially the same as the one published in 1966, but it has been updated to show our current statistics and refer to the pending rulemakings which may result in further procedural changes in the near future.
	The number of applications filed for authority to conduct operations, in interstate or foreign commerce, as common or contract carriers by motor vehicle, contines to rise; and the upward trend shows no signs of abating. Motor carrier applications, comprising 70 percent of the Commission's formal case docket, rose from 5,655 filings in 1964 to 5,899 in 1975. At year's end, 5,805 such applications were still pending, even though 6,424 had been disposed of during the calendar year 1975.	
	Motor carrier application proceedings involve issues of substantial interest not only to the regulated transportation industry, but to every shipper and receiver of goods, regardless of the size of his operation; to manufacturers, wholesalers, distributors, and retailers; and to all members of the general public, both as buyers and consumers, and as travelers over the lines of the Nation's common carriers of passengers. To delay a determination that a newly proposed motor transportation is required by the public convenience and necessity or would be consistent with the public interest and the national transportation policy can result in an irretrievable loss of sales and can unjustifiably deprive the public of needed products and transportation services. For the regulated surface transportation industry to continue to thrive, to grow, and to keep pace with the expanding national economy, the mechanics of regulation must be such that administrative decisions are not only fair and impartial but are rendered with reasonable dispatch and efficiency. The regulatory process in which competing claims are considered and adjudicated must be geared to the type of proceeding involved, and must not entail an expenditure of time and money, either for the parties or the Government, which is disproportionate to the scope, importance, and economic significance of the particular proceeding.	

Under past procedures which provided for oral hearing in virtually all application cases, the Commission found that it was infeasible to deal with motor carrier application proceedings with the promptness and efficiency to which the parties are entitled, and which the nature of the proceedings themselves and the public interest require. Due and timely execution of the Commission's functions, imperatively and unavoidably, required that the procedures be modified to eliminate such requirements as were causing undue delay and unjustified expense.

To achieve timely decisions and insure adjudication with the maximum possible speed and efficiency consistent with the requirements of due process of law, this Commission adopted, among other things, a number of general policies and internal procedures governing motor carrier operating authority applications. A new application form was approved and revised special rules of practice were issued.

The policy stated May 3, 1966, and its implementing rules and regulations are reaffirmed herein, though with slight modification. Additional modifications are under consideration in Ex Parte No. MC-55 (Sub-No. 14) Revision of Application Forms for Operating Authority and Amendment to Rules 22, 49, 51, 57, 74, and 247 of the General Rules of Practice, and Ex Parte No. MC-55 (Sub-No. 19), Revised Content Requirements and Page Limitations on Petitions for Reconsideration.

In processing the motor carrier caseload, the scheduling of unnecessary oral hearings will be avoided to the extent possible. Where the issues presented are well defined or where the matters involved are not of sufficient moment to justify the expense of an oral hearing, parties will be required to submit their evidence in the form of verified statements under the modified procedure, and the issuance of an initial decision by a hearing officer will be dispensed with. Oral hearings for the sole purpose of cross-examination will be scheduled only where material facts in dispute cannot be ascertained under the modified procedure.

PRESENT RULE	PROPOSED RULE	COMMENT
	All applications for motor carrier operating rights will be noticed in the FEDERAL REGISTER as at present. After the 30-day period for filing protests has expired the applications will be designated either for oral hearing or modified procedure. To the oral hearing docket will be assigned the more complex cases, and those which for one reason or another, might be handled more expeditiously and effectively with an oral hearing. Normally such cases will be the subject of an initial ~~report~~ decision by the hearing officer. To the modified procedure docket will be assigned those applications (whether or not opposed) in which an oral hearing is not deemed necessary. Assignment for modified procedure will be followed by an order requiring the submission of the supporting and opposing evidence under the present rules of practice. Such order will provide that "except for good cause shown" all preliminary motions or other requests for relief filed prior to a decision will not be handled separately but will be acted upon by those making the decision in the case. Under modified procedure, once all verified statements are filed (whether or not the application is opposed) the case will be submitted to one of the five Review Boards, in rotation, to the extent practicable, for the issuance of final report. The Board's decision will be subject to petition to Appellate Division 1. A request for cross-examination by any party will be disposed of by the Review Board. If the Board concludes that the request has merit, it will have the authority to refer the case for oral hearing ~~for the purpose of cross-examination.~~ Requests which are found to be without merit will be denied in the Board's report, with the reasons for the action taken. The Review Board also will have authority to refer for ~~full~~ oral hearing any case in which it believes such treatment is warranted.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions).		
	(a) Scope of special rules. These special rules govern the filing and handling of applications seeking the right to operate pursuant to either a Postal Certificate of Public Convenience and Necessity or a General Postal Certificate of Exemption authorizing operation, in interstate or foreign commerce, by motor vehicle in the transportation of mail.	Changed for conformity.
(b) Applications for postal certificates of public convenience and necessity. (1) The application form (Op-Or-10) shall be available from the Secretary, Interstate Commerce Commission, and shall be completed in duplicate, and transmitted to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and a copy thereof shall be sent to the transportation regulatory commission (or, if none, the Governer) of each State within which operations are sought to be performed.	No Change.	
(2) Attached to the applications shall be a true copy of applicant's contract with the Postal Service (or its predecessor Post Office Department), which contract must have been in force on the effective date of section 5215 of the Postal Act.		
(3) If applicant is a successor in interest to a qualifying star route carrier, evidence of continuity of star route service and carrier identity must be furnished (this may be done in letter form duly sworn and notarized).		
(4) The application form provides space for a description of the territory served by the applicant on or before the effective date of section 5215. Here applicant should describe the territorial extent of operations performed pursuant to its contract in force on the effective date, such description being in terms of the appropriate political division or subdivision (i.e., State, county, city, village, et cetera) within which service was authorized by contract. Authority may be granted only commensurate with the service covered by applicant's contract; therefore, applicants are cautioned to be specific in delineating the territory sought in order to avoid delays in processing their applications.		
(5) Notice to the public of any such application will be made by publication in the FEDERAL REGISTER. Provision will be made for the filing of protests within 30 days from the date of publication, although it is not contemplated that protests will, in fact, be filed.		
(6) Upon determination that an applicant is qualified to receive "grandfather" authority, and upon compliance by applicant with sections 215 and 221(c) of the Interstate Commerce Act, and with the rate-filing procedures established by this Commission, a Postal Certificate of Public Convenience and Necessity will be issued, authorizing the transportation of mail from, to, or between points in the involved territory.		

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions). (Continued)		
(c) Applications for inclusion within general postal certificate of exemption. The class of carriers to which such certificate of exemption is applicable is defined as all star route, mail messenger and contract motor vehicle operators, whose for-hire motor carrier operations are confined to a single State, and who, on the effective date of section 5215 of the above-entitled Postal Act, hold a contract for the transportation of mail wholly within a single State. Upon submission to this Commission of a copy of such contract, the name of the carrier's representative to whom inquiries may be made, and the carrier's written request therefor, such carrier shall be included within the terms of the general postal certificate of exemption which reads as follows: General Postal Certificate of Exemption, Designated Single-State Motor Carriers Affected By The Postal Reorganization Act (Public Law 91-375) At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 3d day of March 1971. After due investigation, it appearing that any motor carrier having complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and having complied with all the requirements established by this Commission in its report in Ex Parte No. MC-86, and lawfully engaging in operations solely within a single State in the transportation of mail; that the transportation of mail in interstate or foreign commerce performed by him is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by this Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in the Interstate Commerce Act; that he, therefore, is entitled to inclusion within a general postal certificate of exemption in accordance with the provisions of section 204(a)(4a) of part II of said act; and this Commission so finding: It is ordered, That the said motor carrier be, and it is hereby, granted this general postal certificate of exemption, which during the period it shall remain effective and unrevoked, shall exempt the said motor carrier from compliance with the provisions of part II of said act in respect of transportation of mail in interstate or foreign commerce, and it is hereby issued to said motor carrier.	(7) All further proceedings, including petitions for reconsideration, shall be handled in the manner specified in this Commission's ~~general~~ rules of practice.	Changed for conformity.

PRESENT RULE

§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions). (Continued)

It is further ordered, That this general postal certificate of exemption shall be effective from the date hereof and shall remain in effect until revoked in accordance with the provisions of said act.

By the Commission.

(SEAL) ROBERT L. OSWALD, Secretary.

PROPOSED RULE

§1100.249 Special rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208

(a) Definitions. For the purposes of this section the following words and terms, except as otherwise indicated in the context of this section, are to be construed as follows:

(1) "Postal Service" means the U.S. Postal Service, 39 U.S.C. 201.

(2) Whenever a "section" is cited, it refers to a provision of title 39, United States Code, as revised and reenacted.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Motor carrier" or "carrier" means a common carrier by motor vehicle as defined in subsection (5) of section 5201 of title 39, United States Code, 39 U.S.C. 5201.

(b) Applicability. The provisions of this section shall apply to all orders or determinations of the Postal Service under section 5203 (39 U.S.C. 5203) directing a motor carrier to transport mail.

(c) Filing and content of orders or determinations - (1) General. All orders or determinations shall be filed by the Postal Service with the Com-

COMMENT

The only change is in the number of copies in Sections (c)(3), (d)(5), and (e).

PRESENT RULE

PROPOSED RULE

COMMENT

§1100.249 Special rules governing the filing or motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)

mission at its office in Washington, D.C., and shall conform to the provisions of subparagraphs (2) and (3) of this paragraph.

(2) Content. Each order or determination of the Postal Service shall include: (i) The full and correct name and business address of the motor carrier, (ii) a description of the mail transportation service required, (iii) a specification of the operating authority held by the carrier which corresponds to the mail transportation required, and (iv) a showing that the order or determination is consistent with orders of the Commission under sections 5207 and 5208 (39 U.S.C. 5207 and 5208), if any, or that the Postal Service and the carrier have agreed that the compensation for the transportation and service connected therewith is fair and reasonable. Further, each order or determination issued shall set forth in a conspicuous place on the face thereof, in bold face type, a clear statement that the order or determination is concurrently filed with the Interstate Commerce Commission at Washington, D.C., that it is being simultaneously deposited with the Director, Office of the Federal Register, and that any protest seeking termination thereof under subsection (f) of section 5203 (39 U.S.C. 5203) must be filed in 15 days of the date of publication in the FEDERAL REGISTER. This statement may also include reference to the penalty provisions of section 5206 (39 U.S.C. 5206), and such other information as the Postal Service deems appropriate.

(3) Copies; service. The original and six copies of each order or determination issued under this section shall be filed with the Commission, and one copy of the order or determination simultaneously shall be served upon the motor carrier specified therein and upon any other person known to be interested, in such a manner so as to be received on the date the original is filed with the Commission, and a copy also should be simultaneously deposited with the Director, Office of the Federal Register, for publication therein as notice to all other interested persons. A certificate shall be executed by an authorized official of the Postal Service, showing upon whom simultaneous service has been made. The order or determination filed with the Commission and the envelope of transmittal to the Commission should be clearly marked: "Mail Transportation Service Order (or Determination)."

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.249 ~~Special~~ Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)	Changes for conformity.

(d) Protests seeking termination of Postal Service orders or determinations, and replies thereto - (1) General. A motor carrier subject to an order or determination of the Postal Service, or any of the carrier's other customers, may protest to the Commission and request termination of the order or determination. Such protests shall be restricted to the matter of showing that performance by the carrier of the required mail transportation service would be detrimental to the carrier or to its other customers, or that the carrier does not operate equipment suitable for the transportation of mail, and shall conform to the provisions of subparagraphs (2), (3), and (4) of this paragraph.

(2) Content. The protest for termination of an order or determination filed under this section must identify the issued order or determination (i) by reference to the name and address of the motor carrier shown in the order or determination, (ii) the order number or other identification assigned thereto by the Postal Service, and (iii) specific citation to the volume, page, and date of publication in the FEDERAL REGISTER, i.e., "_____ F.R. _____, _____ 197_ _." Facts relied upon in support of the protest must be verified as provided in Rule 50 of the Commission's ~~general~~ rules of practice. ~~(§1100.50)~~.

(3) When filed. Protests requesting termination of an order or determination filed under this section will not be considered unless made in writing and filed with the Commission at Washington, D.C., within 15 days of the date of publication of the order or determination in the FEDERAL REGISTER.

(4) Replies. Replies confined to rebuttal of such protests may be filed within 10 days of the date on which the protest was filed with the Commission.

(5) Copies; service. The original and six copies of each protest or reply shall be filed with the Commission, and one copy simultaneously shall be served on the opposing party (ies). A certificate shall be executed stating that simultaneous service has been made. The protest or reply and the envelope of transmittal to the Commission should be clearly marked: "Protest (Reply) - Mail Transportation Service Order (or Determination)," and be delivered free of all charges. (Copies for service on the Postal Service shall be addressed to the Assistant General Counsel

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.249 ~~Special~~ Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)	

Transportation, U.S. Postal Service, Washington, D.C. 20260, as agent for the Postmaster General.)

(e) Petitions for reconsideration. Petitions for reconsideration (1) of an order terminating an order or determination of the Postal Service, or (2) of a notice declining to order termination of such an order or determination, may be filed by any interested person within 20 days after service of the order or notice of the Commission. As no replies to the petitions for reconsideration under this rule are contemplated in view of the statutory time limitation, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Commission. Such petitions for reconsideration must be clearly marked: "Petition for Reconsideration - Mail Transportation Service Order (or Determination)." Petitioners shall file an original and ~~seven~~ six (6) copies of the petition with the Commission and one copy thereof shall be served simultaneously on the opposing party (ies), and a certificate of service shall be executed to that effect.

(f) Withdrawal of Postal Service orders or determinations. If, within 90 days after the filing of an order or determination by the Postal Service, the motor carrier cited in the order or determination voluntarily agrees and undertakes to perform the required mail transportation service, the Postal Service shall promptly notify the Commission of such action and shall withdraw the Postal Service order forthwith.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought.	
	(a) Filing of complaint. A person seeking elimination of discrimination against shipments of recyclable materials shall file a formal complaint. Such complaint should be so drawn as to fully advise the parties defendant and the Commission of the discrimination against recyclables complained of; make specific referenct to the tariffs or schedules containing the rates, fares, or charges occasioning the discrimination against the shipment of recyclable materials, if the claimed discrimination is said to be occasioned by the rate structure; and in all other respects comport with the requirements for the commencement of proceedings as set forth in the General Rules of Practice.	The only change is in Section (g) to reflect change in title of rules.
	(b) Discrimination defined. For the purpose of these rules, "discrimination" is understood to encompass, but not be limited to, situations in which carriers charge different rates and/or charges for substantially similar transportation servicesson recyclable materials which are competitive, in whole or in part, with virgin natural resource materials. Any complainant of the view that the "discrimination" referred to in section 603 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 793 (1974), is other than "unjust discrimination" prescribed by section 2 of the Interstate Commerce Act shall set forth the reasons therefor in said complaint.	

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PROPOSED RULE

COMMENT

§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought.

(c) Recyclable materials defined. For the purpose of these rules, the term "recyclable materials" includes, but is not limited to, commodities shown in Standard Transportation Commodity Code Tariff No. 1-B, Traffic Executive Association - Eastern Railroads, Agent, I.C.C. No. C-998, issued jointly with other agents, effective April 1, 1974, including the following:

Commodity	STCC No.:
22	Textile waste garneted or processed.
22 973 15	Noils, ramie.
22 973 25	Nolis (combings or comb-
22 973 68	Rovings, jute and istle (ixtle).
32 299 24	Cullet (broken glass).
33 119	Blast furnace or coke oven products, nec.
32 312	Copper matte, speiss or flue dust.
33 322	Lead matte, speiss or flue dust.
33 332	Zinc dross, residues, ashes.
33 342	Aluminum residues.
33 398	Miscellaneous nonferrous metal residue.
40 1	Ashes.
40 2	Waste or scrap.

(d) Filing of answer. Answers to claims of discrimination shall be so drawn as to fully advise the complainant, any other parties, and the Commission of the defense to the charge of discrimination against the shipment of recyclable materials that the respondent proposes to assert in its defense and otherwise conform to the requirements of the General Rules of Practice.

(e) Procedural handling. The proceeding following the commencement of the action as set forth in the foregoing rules shall be handled under modified procedure and will be accorded expeditious handling.

(f) Intervention. (1) A summary of any complaint filed with the Commission under these rules will be published in the FEDERAL REGISTER as notice to interested parties, (2) Government agencies, environmental and other public interest groups, and trade associations having an interest in the proceeding may intervene as of right by filing a statement of their intention to participate within 20 days from the date that notice of the

PRESENT RULE

PROPOSED RULE

COMMENT

§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought. (Continued)

filing of a complaint is published in the FEDERAL REGISTER. After the expiration of that 20-day period, petitions for leave to intervene must be filed under rule 72 of the General Rules of Practice, 49 CFR §1100.72.

(g) Other procedures. In all other particulars the proceeding shall be governed by the Commission's General Rules of Practice.

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APPENDIX A—CODE OF ETHICS FOR PRACTITIONERS BEFORE THE INTERSTATE COMMERCE COMMISSION

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PREAMBLE

No rules of conduct can be framed which will particularize all the duties of the practitioner in the varying phases of litigation or in his relations to clients, adversaries, other practitioners, the Commission and the public. The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission.

It will be remembered that the practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law, and (b) others having traffic or other technical experience qualifying them to aid the Commission in administration of the Interstate Commerce Act and related acts of Congress. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer; for the latter, no code of ethics has been written heretofore. The following canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply alike to all practitioners before the Commission and the setting forth therein of particular duties or principles of conduct should not be construed as a denial of the existence of others equally imperative although not specifically mentioned. The word "Commission" as used herein includes Divisions of the Commission, and the representatives of the Commission, whether members, examiners, or other employees connected with the matter in hand.

CANONS OF ETHICS

1. *Standards of ethical conduct in courts of United States to be observed.* These canons are in furtherance of the purpose of the Commission's rules of practice which enjoin upon all persons appearing in proceedings before it to conform, as nearly as may be, to the standards of ethical conduct required of practitioners before the courts of the United States; and such standards are taken as the basis for these specifications, modified in so far as the nature of the practice before the Commission requires.

2. *The duty of the practitioner to and his attitude towards the Commission.* It is the duty of the practitioner to maintain towards the Commission a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and strive to uphold its honor and dignity. The Commission, not being wholly free to defend itself is peculiarly entitled to receive the support of the practitioner against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or

No changes are proposed in Appendix A except to change "examiner" to "hearing officer" wherever it appears in Appendix A as indicated.

As used in Appendix A, examiner actually means a hearing officer. While examiners are now known as Administrative Law Judges, the term "hearing officer" is all inclusive.

PRESENT RULE

employees of the Commission it is the right and duty of the practitioner to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

3. *Punctuality and expedition.* It is the duty of the practitioner not only to his client, but also to the Commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

4. *Attempts to exert political influence on the Commission.* It is unethical for a practitioner to attempt to sway the judgment of the Commission by propaganda, or by enlisting the influence or intercession of members of the Congress or other public officers, or by threats of political or personal reprisal.

5. *Attempts to exert personal influence on the Commission.* Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, examiner, or other representative of the Commission, unrelated for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between Commission and practitioners.

6. *The selection of Commissioners.* The nomination of Commissioners is a duty of the President, and confirmation, of the Senate. It is the duty of the practitioners in so far as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from outweighing fitness in the selection.

7. *The practitioner's duty in its last analysis.* No client, corporate or individual, however powerful, no cause, civil or political however important, is entitled to receive, and no practitioner should render, any service or advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such improper service or advice the practitioner invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

PROPOSED RULE

8. *Private communications with the Commission.* In the disposition of contested proceedings brought under the Interstate Commerce Act the Commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capacity. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a commissioner, examiner or other representative of the Commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. Practitioners at all times should scrupulously refrain in their communications to and discussions with the Commission and its staff from going beyond ex parte representations that are clearly proper in view of the administrative work of the Commission.

9. *Adverse influences and conflicting interests.* It is the duty of a practitioner at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a practitioner represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

10. *Joint association of practitioners and conflicts of opinion.* A client's proffer of the assistance of additional practitioner should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A practitioner should decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

When practitioners jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should

COMMENT

be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another practitioner are unworthy of those who should be brethren, but, nevertheless, it is the right of any practitioner, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful practitioner, generally after communication with the practitioner of whom the complaint is made.

11. *Withdrawal from employment.* The right of a practitioner to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The practitioner representing him should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect. If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the practitioner's remonstrance in presenting frivolous defenses, or if he deliberately disregards an agreement or obligation as to fees or expenses, the practitioner may be warranted in withdrawing on due notice to the client, allowing him time to employ another. So also when a practitioner discovers that his client has no case and the client is determined to continue it; or even if he finds himself incapable of conducting the case effectively. Sundry other instances may arise in which withdrawal is to be justified. Upon withdrawing from a case after a retainer has been paid, he should refund such part of the retainer as has not been clearly earned.

12. *Advising upon the merits of a client's cause.* A practitioner should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. He should beware of bold and confident assurances to clients, especially where employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

13. *Negotiations with opposing party.* A practitioner should not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the practitioner who represents the other party. It is incumbent upon the practitioner most particularly to avoid everything that may tend to mislead a party not represented by a practitioner, and he should not undertake to advise him as to the law.

14. *Fixing the amount of the fee.* In fixing fees, practitioners should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, although his poverty may require a less charge, or even none at all.

15. *Compensation, commission and rebates.* A practitioner should accept no compensation, commissions, rebates, or other advantages from parties to the proceeding other than his client without the knowledge and consent of his client after full disclosure.

16. *Contingent fees.* Contingent fees should be such only as are sanctioned by law. In no case, except a charity case, should they be entirely contingent upon success.

17. *Division of fees.* No division of fees for services is proper, except with a member of the bar or with another practitioner, based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and reward them by a division of fees, and such a practice cannot be too severely condemned.

18. *Suing clients for fees.* Controversies with clients concerning compensation are to be avoided in so far as compatible with self-respect and with the right to receive reasonable recompense for services; and lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

19. *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of the litigation which he is conducting.

20. *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but subject to reimbursement by the client.

21. *Witnesses.* A practitioner shall not undertake that the compensation of a witness shall be contingent upon the success of the cause in which he is called. If the ascertainment of truth requires that a practitioner should seek information from one connected with or reputed to be biased in favor of an adverse party, he is not thereby deterred from seeking to ascertain the truth from such person in the interest of his client.

22. *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be used by him.

23. *How far a practitioner may go in supporting a client's cause.* Nothing will operate more certainly to create or foster popular prejudice against practitioners as a class, and deprive them of that full measure of public esteem and confidence which belongs to the proper discharge of their duties than does the false claim, often set up by the un-

No changes.

scrupulous in defense of questionable transactions, that it is the duty of the practitioner to do whatever may enable him to succeed in winning his client's cause.

The practitioner owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of the disfavor of the Commission or public unpopularity should restrain him from full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his counsel to assert every such remedy or defense. But it is to be steadfastly borne in mind that this great trust is to be performed within and not without the bounds of the law. Admission to the privilege of appearing before the Commission as representing another does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

24. *Restraining clients from improprieties.* A practitioner should use his best efforts to restrain and to prevent his clients from doing those things which he himself ought not to do, particularly with reference to their conduct towards the Commission, other practitioners, witnesses and suitors. If a client persists in such wrong-doing the practitioner should terminate their relations.

25. *Ill-feeling and personalities between advocates.* Clients, not their representatives, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence practitioners in their conduct and demeanor toward each other or toward suitors in the case. All personalities between practitioners should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of practitioners on the other side. Personal colloquies between practitioners which cause delay and promote unseemly wrangling should also be carefully avoided. Their statements should be addressed to the Commission.

26. *Treatment of witnesses and litigants.* A practitioner should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the practitioner's conscience in such matters. He has no right to demand that the practitioner representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

27. (None.)

28. *Discussion of pending litigation in public press.* Attempts to influence the action and attitude of the members and examiners of the Commission through propaganda, or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the Commission that the facts of pending litigation shall be made known to the public through the press in a fair and unbiased manner and in dispassionate terms. Practitioners should themselves avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the Commission, or to influence the Commission's course and judgment as to pending or anticipated litigation. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

29. *Candor and fairness.* The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The non-technical character and liberality of the Commission's practice call for scrupulous observance of the principles of fair dealing and just consideration for the rights of others.

It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A practitioner should not offer evidence, which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He should not introduce into an argument remarks or statements intended to influence the by-standers.

These and all kindred practices are unethical and unworthy of a practitioner.

30. *Right of practitioner to control the incidents of the trial.* As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposing practitioner to trial when he is under affliction or bereavement, forcing

the trial on a particular day to the injury of the opposing practitioner when no harm will result from trial at a different time, agreeing to extensions of time and the like, the practitioner and not the client, must be allowed to judge. In such matters no client has a right to demand that his practitioner shall be illiberal or do anything therein repugnant to the practitioner's sense of honor and propriety.

31. *Taking technical advantage of opposing practitioner; agreements with him.* A practitioner should not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner. In so far as possible, important agreements affecting the rights of clients should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing.

32. *Advertising, direct or indirect.* The most worthy and effective advertisement possible is the establishment of a well-merited reputation for capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not improper. But solicitation of employment by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unethical. It is equally unethical to procure business by indirection through touters of any kind. Indirect advertisement for employment by furnishing or inspiring newspaper comments concerning causes in which the practitioner has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the practitioner's positions, and all other like self-laudation, lower the tone of the calling and are intolerable.

33. *Professional card.* The simple professional card mentioned in Canon 33 may with propriety contain only a statement of the practitioner's name (and those of his associates), occupation, address, telephone number, and special branch or branches of practice. Such cards may be inserted in reputable lists and may give authorized references, or name clients with their permission.

34. *Stirring up litigation, directly or through agents.* It is unethical for a practitioner to volunteer advice that a proceeding be brought before the Commission, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unethical but it is indictable at common law. It is disreputable for a practitioner to hunt up defects or other causes of action and disclose them in order to be employed to bring complaint, or to breed litigation by seeking out those having claims for damages or any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office to seek his services. No complaint should be brought before the Commission by a practitioner except with the distinct knowledge and specific consent of the client in the particular case. A duty to the public and to the Association devolves upon every member having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disciplined or disbarred.

35. *Justifiable and unjustifiable litigation.* The practitioner must decline to conduct a cause or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. But otherwise it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the Commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

36. *Responsibility for litigation.* No practitioner is obliged to act either as adviser or advocate for every person who may seek to become his client. He has the right to decline employment. Every practitioner upon his own responsibility must decide what employment he will accept, what causes he will bring before the Commission for complainants, or contest for defendants or respondents. The responsibility for advising as to questionable transactions, for bringing questionable proceedings, for urging questionable defenses is his alone. He cannot escape it by urging as excuses that he is only following his client's instructions, or that he is under a stated retainer or in the regular employment of his client.

37. *Discovery of imposition and deception.* When a practitioner discovers that some fraud or deception has been practiced, which has unjustly imposed upon the Commission or a party, he should endeavor to rectify it; first by advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his counsel (practitioner), so that appropriate steps may be taken.

38. *Upholding the honor of the calling.* Practitioners should expose without fear or favor before the proper tribunals corrupt or dishonest conduct and should accept without hesitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a cause in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities. The practitioner should aid in guarding the bar of the Commission against admission thereto of candidates unfit or unqualified because deficient in either

No changes.

moral character or education. A practitioner should propose no person for admission to practice before the Commission unless from personal knowledge or upon reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in the Commission's rules of practice. He should strive at all times to uphold the honor and maintain the dignity of his calling and to improve not only the law but the administration of justice.

39. *Intermediaries.* The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. His responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties in the interest of such intermediaries. His relation to the client should be personal, and the responsibility should be direct to the client.

He may accept employment from any organization such as an association, club or trade organization, authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to their individual affairs as are consistent with the free and untrammeled performance of his duties to the Commission.

Nothing in this canon shall be construed as conflicting with canon 17.

40. *Retirement from public employment.* A practitioner, having once held public office or having been in the public employ, should not after his retirement, accept employment as an advocate or adviser in the same proceeding or as to the same, or substantially the same, facts as were involved in any specific question which he investigated or passed upon in a judicial or quasi-judicial capacity while in such office or employ, whether the same or different parties are concerned.

41. *Confidences of a client.* The duty to preserve his client's confidences in the course of his employment outlasts the practitioner's employment, and extends as well to his employees. None of them should accept employment which involves the disclosure or use of these confidences, either for the private advantage of the practitioner or his employees or to the disadvantage of the client, without knowledge and consent of the client even though there are other available sources of such information. A practitioner should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included within the confidences which a practitioner is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened.

42. *Partnership names.* Partnerships among practitioners for the practice of their calling are very common and are not to be condemned. ~~The rules of the Commission provide that corporations or firms will not be recognized~~ Practitioners before the Commission should therefore appear individually and not as members of partnerships. In the formation of partnerships care should be taken not to violate any law locally applicable. Care should also be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not locally admitted, or who is not duly authorized to practice, and as such amenable to discipline. No person should be held out as a practitioner or member who is not so admitted. No practitioner who is not admitted to practice in the courts should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership. The continued use of the name of a deceased or former partner is or may be permissible by local custom, but care should be taken that no imposition or deception is practiced through this use. If a member of the firm becomes a Commissioner, or an Examiner or other employee of the Commission his name should not be retained in the firm name, as such retention may give color to the impression that an improper relation or influence is continued or possessed by the firm.

This canon does not inhibit the association of a practitioner with a mercantile, manufacturing, or other commercial institution, in the capacity of its representative or adviser.

43. Titles. No ~~member of the Association~~ practitioner not admitted to the bar shall use the title "Attorney" or "Counsel" but should use the title "Traffic Manager," "Practitioner before the Interstate Commerce Commission," "Registered Practitioner," or other appropriate title or designation.

The second sentence of present Canon 42 is deleted to recognize the current practice of most law firms to operate as professional corporations.

The language of Canon 43 is changed to eliminate reference to an unidentified association.

PRESENT RULE

PROPOSED RULE

COMMENT

APPENDIX B—APPROVED FORMS

TABLE OF CONTENTS

1. Complaint; verification.
2. Answer.
3. Certificate of service.
4. Petition for leave to intervene.
5. Form of reparation statement under Rule 100.
6. Verification for statements of fact filed under modified procedure.
7. Approved Form No. 7 under Rule 245.

[These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary. Before using such forms the pertinent rules, particularly those referred to in the footnotes, should carefully be studied.]

No. 1. COMPLAINT [1]

Before the Interstate Commerce Commission

COMPLAINT

---

v.

[Insert without abbreviation the names of complainant and defendant (including each of the receivers, operating trustees, or other legal representatives of defendant), and whether a corporation, firm, or partnership, specifying the individual name) of the parties composing the partnership; and the postoffice address of any motor carrier defendant.]

The Complaint of the above-named complainant respectfully shows:

I. That [complainant should here state nature and place of business, also whether a corporation, firm, or partnership and if a firm or partnership, the individual names of the parties composing the same.]

II. That the defendant above named is [here state whether: (a) carrier by railroad, express, motor vehicle (common or contract), water (common or contract), a freight forwarder, or otherwise; (b) the transportation is of property or passengers, or both; and (c) the transportation involves a freight forwarder or more than one type of carrier, specifying particulars] between points in the State of---------- and points in the State of---------- [a complaint under part II should specifically name the States in and through which the transportation which gives rise to the complaint is performed] and as such defendant is subject to the provisions of the Interstate Commerce Act.

III. That [state in this and subsequent paragraphs to be numbered IV, V, etc., the matter or matters intended to be complained of, naming every rate, fare, charge, classification, regulation, or practice the lawfulness of which is challenged, and also, if practicable, the points between which the rates, etc., complained of are applied. Where it is impracticable to designate each point, describe clearly the rate territory or rate group involved. Whenever practicable tariff or schedule reference should be given.]

[Where unlawful discrimination, preference, or prejudice is alleged the particular elements specified in the act as constituting such violation (see sections 2, 3, 4, 13, 216, 217, 218, 305, and 406) and the facts upon which complainant relies to establish the violation should be stated clearly. Where any provision of the act other than those just mentioned, or any requirement established pursuant to the act, is alleged to be violated, the pertinent statutory provision, or established requirement, together with the facts which are alleged to constitute the violation, should be stated. If two or more subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute vio-

[1] See Rules 26 to 33, inclusive.

No changes.

PRESENT RULE

PROPOSED RULE

COMMENT

lation of one subsection, or requirement, should be stated separately from those claimed to constitute a violation of another subsection, or requirement, wherever that can be done by reference or otherwise without undue repetition.]

X. That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates [fares or charges, etc.] for transportation which were when exacted and still are (1) unjust and unreasonable in violation of section ------- of the Interstate Commerce Act, and (2) unjustly discriminatory in violation of section----------, and (3) unduly preferential or prejudicial in violation of section----------, and (4) in violation of the long-and-short haul [or aggregate of intermediate rates] provision of section 4 thereof. [Use one or more of the allegations numbered (1), (2), (3), (4), or other appropriate allegation according to the nature of the complaint.] That [if recovery of damages is sought] complainant has been injured thereby to his damage in the sum of $----------.

Wherefore complainant prays that defendant be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant [and each of them] to cease and desist from the aforesaid violations of said act, and establish and put in force and apply in future to the transportation of----------between the origin and destination points named in paragraph----------hereof, in lieu of the rates [fares, or charges, etc.], named in said paragraph, such other rates [fares, or charges, etc.], as the Commission may deem reasonable and just [and also, if recovery of damages is sought, pay to complainant by way of reparation for the unlawful charges hereinbefore alleged the sum of $----------, or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is entitled to an award of damages under the provisions of said act for violation thereof], and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at----------, 19-----

(Complainant's signature [2])

(Office and post-office address)

(Signature of practitioner)

(Post-office address)

VERIFICATION [3]

STATE OF----------}
County of----------} ss:

----------, being duly sworn, deposes and says: that he is the complainant (or, one of the complainants, or, is the (insert title of the affiant if complainant is a corporation) of the ---------- company, complainant) in the above-entitled proceeding; that he has read the foregoing complaint, and knows the contents thereof; that the same are true as stated, except as to matters and things if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

Subscribed in my presence, and sworn to before me, by the affiant above named, this ------- day of ----------, 19-----

[USE AN L. S. IMPRESSION SEAL]

[Title of Officer]

Commission expires ----------

[1] See footnote to Verification.

[2] Signature and verification by complainant unnecessary if complaint is signed by a practitioner. See Rule 17.

No changes.

No. 3. ANSWER [4]

Before the Interstate Commerce Commission

ANSWER

Docket No. ----------

----

v.

The above-named defendant, for answer to the complaint in this proceeding, respectively states:

I. [Here set forth appropriate and responsive admissions, denials, and averments, specifically answering the complaint paragraph by paragraph.]

Wherefore defendant prays that----------

Dated ----------, 19-----

[Name of defendant]

By [5] ----------

[Title of officer]

[Office and post-office address]

[Signature of practitioner]

[Post-office address]

No. 5. CERTIFICATE OF SERVICE [6]

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by (here state the precise manner of making service, which must be consistent with the provisions of Rule 22).

Dated at ---------- this ---- day of ---------- 19---

(Signature) ----------

No. 6. PETITION FOR LEAVE TO INTERVENE [7]

Before the Interstate Commerce Commission

PETITION

/ "

[or state other title]
} Docket No.----------

[4] See Rules 35 to 37, inclusive.

[5] See Rule 17

[6] See Rule 22

[7] See Rule 73

PRESENT RULE

Comes now your petitioner, ...
....., and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That [petitioner should here state nature and place of business, and whether as corporation, firm, or partnership, etc., as in form No. 1].

II. [Petitioner should here set out specifically his position and interest in the proceeding.]

III. [If affirmative relief is sought see paragraphs III and X and prayer in form No. 1]

Wherefore said ..... prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought insert appropriate prayer here.]

Dated at ....., 19.....

[See forms Nos. 1 and 3 as to subscription, verification, and certificate of service.]

No. 5. Form of Reparation Statement Under Rule 100

Claim of ..... under decision of the Interstate Commerce Commission in Docket No. .....

Date of shipment	Date of delivery or tender of delivery	Date charges were paid	Car initials	Car[1] number	Origin	Destination	Route	Commodity	Weight	As charged		Should be		Reparation on basis of the Commission's decision	Charges paid by[2]
										Rate	Amount	Rate	Amount		

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any other person, in any other proceedings, except as follows: (Here indicate any exceptions, and explanation thereof).

.....
Claimant

By .....
Practitioner

.....
Address

.....
Date

Total amount of reparation $.....

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ..... Concurred[4] in: ..... Company

..... Company, Defendant Collecting Carrier, Defendant.[5]

By ..... Auditor. By ....., Auditor.

[1] Substitute "Vessel" if water carrier involved. [3] Substitute "Voyage No." if water carrier involved.

[2] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

[4] If not a defendant, strike out word "defendant."

[5] For concurring certificate in case collecting carrier is not a defendant.

No. 6. Verification for Statements of Fact Filed Under Modified Procedure[6]

State of .....
County of ....., ss:

..... being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

(Signed) .....

Subscribed and sworn to before me this ..... day of .....

Notary Public of .....

My Commission expires .....

[6] See Rule 60.

PROPOSED RULE

No changes.

COMMENT

PRESENT RULE

No. 7. NOTICE OF FILING OF APPLICATION FOR PUBLICATION IN FEDERAL REGISTER UNDER SECTION 206(a)(6) OF THE INTERSTATE COMMERCE ACT, AS AMENDED

(See instructions)

PART I

(To be completed by applicant)

Notice is hereby given that the below-named applicant has filed with

_____

(Name of State commission)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. _____

(Name and business address of applicant)

_____

(Street) (City) (State)

2 _____

(Name and address of applicant's representative, if any)

_____

(Street) (City) (State)

3. Describe below in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce. (If additional space is necessary, use reverse side.)

_____

(Signature)

_____

(Title)

Date _____ 19--

PART II

(To be completed by State commission)

Date of filing application _____

Docket number assigned _____

Date and time and place application has been assigned for hearing, if known _____

_____

_____

(Signature)

_____

(Title)

_____

(Name of State commission)

Date this notice forwarded to Interstate Commerce Commission, Washington, D.C. 20423, _____ 19--

INSTRUCTIONS

This form is for use in giving notice to interested persons regarding the filing of intrastate motor carrier applications in connection with which the applicant also desires authority to engage in interstate and foreign commerce pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, by Public Law 87-805. It should be filed in *duplicate* (along with the intrastate application) with the State commission, which will forward it to the Interstate Commerce Commission, Washington, D.C. 20423.

The description in Part I, item 3 should include the commodities (or passengers) sought to be transported, the points to be served, and the routes over which, or territories within which, such transportation is to be performed. Care should be taken to insure that the description, which will be published in the FEDERAL REGISTER, fully informs interested persons of the type and scope of the proposed intrastate operations, and the extent to which applicant desires authority to engage in transportation in interstate and foreign commerce in connection with such intrastate operations.

PROPOSED RULE

"No. 7" has been added to heading to indentify form referred to under Rule 245.

There are no other changes in Appendix B.

COMMENT

PRESENT RULE

APPENDIX C—EX PARTE COMMUNICATIONS

1. *Ex parte communications.* (a) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any ex parte communication concerning the merits of the proceeding to any member of the Commission, hearing officer, member of a joint board, or to any employee of the Commission participating in the decision in such proceeding.

(b) No member of the Commission, hearing officer, member of a joint board, or employee of the Commission participating in the decision in such proceeding shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.

2. The prohibitions of paragraph 1 apply from the time an on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure or from such earlier time as the Commission may fix by rule or order in the particular case.

3. For the purposes hereof:

(a) "On-the-record proceeding" means a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.

(b) "Person who intercedes in any proceeding" means any individual outside the Commission (whether in public or private life), partnership, corporation, or association, other than a party or an agent of a party, who volunteers a communication which he may be expected to know may advance or adversely affect the interest of a particular party to the proceeding, whether or not he acts with the knowledge or consent of any party or any party's agent.

(c) "Ex parte communication concerning the merits" includes both oral and written communications, but the following classes of ex parte communications shall not be prohibited:

(1) Any oral or written communication which all the parties to the proceeding agree, or which the Commission, the hearing officer, or joint board formally rules, may be made on an ex parte basis.

(2) Any oral or written communication of facts or contentions which have general significance for an industry subject to regulation if the communicator cannot reasonably be expected to know that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which he is interested.

PROPOSED RULE

APPENDIX C - EX PARTE COMMUNICATIONS

1. Ex parte communications. (a) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any ex parte communication concerning the merits of the proceeding to any member of the Commission, hearing officer, member of a joint board, or to any employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding.

(b) No member of the Commission, hearing officer, member of a joint board, or employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.

(2) The prohibitions of paragraph 1 apply from the time an on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure, at such time as the person responsible for the communication has knowledge that the proceeding will be so noticed, or from such earlier time as the Commission may fix by rule or order in the particular case.

3. For the purposes hereof:

(a) "On-the-record proceeding" means a proceeding described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553) or a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.

COMMENT

The additional language in sections 1(a) and 1(b) are designed to bring this provision into direct conformity with Section 557(d)(1)(A) of the Administrative Procedure Act, see P.L. 94-409.

This language would bring this provision into conformity with section 557(d)(1)(E) of the A.P.A.

As a practical matter most Commission rulemaking proceedings need only fulfill the notice and comment requirements of section 553 of the APA and are not required to "be made on the record after opportunity for an agency hearing." United States v. Florida East Coast R. Co., 410 U.S. 224 (1973) Thus, read literally, the prohibition contained in the present Appendix C would appear not to apply to most rulemaking proceedings since they are not required "to be decided solely upon the record made in a Commission hearing."

However, Appendix C was promulgated prior to the Florida East Coast decision, and thus it may be unclear whether or not it covers section 553 rulemaking proceedings. Section 553 proceedings are more informal than adjudications in that they can include informal conferences and reliance on existing Commission records. Clearly, however, ex parte communications with the decision makers would seem to violate the spirit of section 553 in that other parties would be deprived of notice of the communications and an opportunity to comment on them even if they formed the basis of a decision. The Commission does not now engage, nor has it engaged, in such communications. Accordingly, the committee recommends that part 3(a) be clarified to

PRESENT RULE

(d) "Any employee of the Commission participating in the decision" includes personal assistants to members of the Commission, members of an employee review board appointed pursuant to Public Law 87-247 (1961) to whom the proceeding may be referred for decision, employees of the Commission Bureau (e.g., Operating Rights, Finance, Rates and Practices) whose responsibilities correspond to the nature of the proceeding, and the staff of the General Counsel's Office.

4. Any member of the Commission, hearing officer, employee of the Commission, or member of a joint board, participating in the decision who personally receives a written or oral communication which he believes is prohibited at the time received, shall transmit the written communication or a written summary of the substance of an oral communication promptly to the Chairman of the Commission together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself. If the Chairman concludes that the communication is prohibited, or that the dictates of fairness require that it be made public, he shall instruct the Secretary to place the written communication or summary of the oral communication in the correspondence part of the public docket of the proceeding or take such other or further action as may be appropriate under all of the circumstances.

5. The Commission may censure, or suspend or revoke the privilege to practice before the agency, of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

6. To the extent permitted by law, the relief or benefit sought by a party to a proceeding may be denied if the party, or an agent of the party, knowingly and willfully makes or solicits the making of a prohibited communication.

7. The Commission may censure, suspend, or dismiss, or institute proceedings for the suspension or dismissal of, any Commission employee who knowingly and willfully violates the foregoing prohibitions or requirements.

PROPOSED RULE

(8) Any communication by means of any news medium which in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publications with respect to pending on-the-record proceedings.

(d) "Any employee of the Commission participating in the decision" includes personal assistants to members of the Commission, members of an employee review board appointed pursuant to Public Law 87-247 (1961) to whom the proceeding may be referred for decision, employees of the ~~Commission Bureau (e.g., Operating Rights, Finance, Rates and Practices)~~ Commission's Office of Proceedings ~~whose responsibilities correspond to the nature of the proceeding,~~ and the staff of the General Counsel's Office.

4. Any member of the Commission, hearing officer, member of a joint board, or employee of the Commission, participating or who reasonably may be expected to participate in the decision, who personally receives a written communication which he believes is prohibited at the time received, shall promptly transmit the written communication, or a written summary of the substance of an oral communication, together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself, to the Secretary of the Commission, who shall place any material so received in the correspondence section of the public docket of the proceeding. Any such person who receives a communication and who is not certain whether such communication is a prohibited ex parte communication may request, and shall be given promptly, a ruling on the question from the Commission's General Counsel. The Chairman of the Commission shall be notified promptly of all reports of ex parte communications, or requests for rulings on possible ex parte communications, transmitted to the Secretary or the General Counsel. He may require that any such communication be placed in the correspondence section of the docket if he concludes that the dictates of fairness require that it be made public, even if it is not a prohibited communication, and he may direct the taking of such other or further action as may be appropriate under all the circumstances.

COMMENT

indicate that section 553 rulemaking proceedings are covered by the prohibition against ex parte communications.

3(d):
This change, while not required by the new legislation, would serve to bring the present language of this provision up to date.

The principal reason for proposing a change in this section is to eliminate any appearance that the Chairman might have the authority to prevent the inclusion in the public docket of a communication believed by the person receiving it to be prohibited. It is believed that section 557(d)(1)(C) places the responsibility for making that determination upon the person receiving the communication, and leaves no room for any other person, or the agency itself, to overrule his determination. Recognizing that there may be doubts as to the nature of a communication, specific provision would be made for the person receiving a questionable communication to obtain a prompt ruling on its propriety from the General Counsel. Authority would be retained in the Chairman to have any communication placed in the docket where the "dictates of fairness" require it, even if it did not technically fall within the prohibited category. The Chairman would also retain the authority to take whatever further action he might deem appropriate. Presumably, this would include recommending disciplinary proceedings or the denial of the relief sought by the offending party.

PRESENT	PROPOSED RULE	COMMENT
	APPENDIX D - ATTORNEYS-QUALIFICATION	Descriptive title added.

I,----------
(Name)

(Address) (Telephone No.)

hereby declare that I am an attorney at law qualified as a member in good standing of the bar of the highest court of the ----------.

(Signature)

PRESENT RULE	PROPOSED RULE	COMMENT

APPENDIX E--INDEX OF THE SPECIAL RULES CONTAINED IN PARTS 1101-1159.

PARTS 1101-1109--RULES OF PRACTICE

Part

1101 Temporary operating authorities and approvals.
1102 Procedures governing rail carrier general increase proceedings.
1104 Procedures to be followed in motor carrier revenue proceedings.
1107 Requirements and procedures relating to Railroad Rate Adjustment Act of 1973.

1108 Revised Guidelines for Implementation of the National Environmental Policy Act of 1969.

PARTS 1110-1119--RAILCARRIERS CONSOLIDATION, FINANCE, AND REORGANIZATION

1110 General requirements.
1111 Railroad and water carrier consolidation procedure.
1112 Interlocking officers.
1113 Guaranty of loans to carriers by railroad.
1114 Alteration or modification of securities and the provisions of instruments, and filing of certificates and reports.
1115 Issuance of securities, assumption of obligations, and filing of certificates and reports.
1116 Recordation of documents.
1117 Reorganization of railroads.
1118 Corporate reorganization of carriers and corporations.

PARTS 1120-1129--SPECIAL PROCEDURES; RAILCARRIERS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1120 Construction, extension, acquisition, or operation of railroad lines.
1121 Abandonment of railroad lines.
1122 Discontinuance or change of operation or service.
1123 Determination of avoidable losses.
1124 Regulations governing the adequacy of intercity railroad passenger service.
1125 Standards for determining rail service continuation subsidies.

1126 Submission of Cost Data to Justify Reimbursement for Directed Service

PARTS 1130-1139--SPECIAL PROCEDURES; MOTOR CARRIERS AND BROKERS CERTIFICATES, PERMITS, LICENSES

1130 Applications for motor carrier certificates and permits.
1131 Temporary authority applications under section 210a(a) of the Interstate Commerce Act.

This new Appendix E is provided pursuant to proposed Rule 1(a). It is designed to serve the need and convenience of the public by calling attention to the special procedural requirements in 49 CFR 1101-1159. In fact, Appendix E should be of considerable benefit to the many lawyers and practitioners who rely almost exclusively upon the pamphlet edition of the Rules of Practice and are not fully aware of additional procedural requirements contained in the Code of Federal Regulations.

Part

1131a Temporary authority applications under section 311(a) of the Interstate Commerce Act.
1132 Transfers of operating rights.
1133 Transfers of Passenger Brokers' Licenses.
1134 Control or consolidation of motor carriers or their properties.
1135 Corporate reorganizations of motor carriers.

PARTS 1140-1149--SPECIAL PROCEDURES; WATER CARRIERS

1140 Extensions of operations.
1141 Transfers of certificates and permits to operate.

PARTS 1150-1159--SPECIAL PROCEDURES; FREIGHT FORWARDERS

1150 Applications for permits.
1151 Transfers of operating rights (permits).

APPENDIX F

NUMBER OF COPIES OF DOCUMENTS (IN ADDITION TO ORIGINAL) TO BE FILED WITH THE COMMISSION

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
		Original plus:
Applications - Finance Matters		
Competitive Bidding Requirements - Exemption.	49 CFR 1115.25 (49 CFR 1110.7)	Six (6)
Interlocking Officers - Approval.	49 CFR 1112.7	Six (6)
Rail Line - Abandonment.	49 CFR 1121.4(a)	Six (6)
Rail Line - Construction, Extention, Acquisition or Operation.	49 CFR 1121.2(b)	Nine (9)
Rail or Ferry Line - Discontinuance or Change of Service.	49 CFR 1121.8	
(If by Notice)		Eight (8) of Notice Seven (7) of Statements
(If by Petition)		Seven (7)
Railcarriers - Guaranty Loans.	49 CFR 1113.4(c)	Six (6)
Railroad Consolidation.	49 CFR 1111.4(b)	Five (5)
Railroad Reorganization.	49 CFR 1117.12(b)	Six (6)
Securities Issuance, Assumption of Obligations.	49 CFR 1115.3(e) (49 CFR 1110.7)	Six (6)
Securities or Instruments - Alteration or Modification.	49 CFR 1114.3(b)	Six (6), plus one (1) for governor of each State in which applicant operates

COMMENT

APPENDIX F is added to the Rules to provide a convenient reference so that the public and the Commission's staff might be able to find out, at a glance, the number of copies required for all kinds of documents filed with the Commission.

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Applications - Motor Carrier and Broker		Original plus:
Acquisition of Control. (Form OP-F-45)	49 CFR 1134.50(b) (49 CFR 1003.1)	Five (5)
Brokers of Passengers - License. (Form OP-OR-11)	(49 CFR 1003.1)	None
Brokers of Property - License. (Form OP-OR-11)	(49 CFR 1003.1)	None
Certificate of Exemption. (Form OP-OR-110)	(49 CFR 1003.1)	None
Certificate of Registration. (Form OP-OR-100)	49 CFR 1047.10 (49 CFR 1003.1)	None
Motor Carrier - Certificate or Permit. (Form OP-OR-9)	49 CFR 1130.1(b) (49 CFR 1003.1)	One
Merger, Consolidation, Purchase, or Lease. (Form OP-F-44)	49 CFR 1134.1(b) (49 CFR 1003.1)	Five (5)
Rental Contract Approval - Contract Carrier. (Form BOp79)	(49 CFR 1003.1)	Three (3) plus three (3) of rental contract
Temporary Authority. (Form OP-MCB-95	49 CFR 1131.2(b) (49 CFR 1003.1)	Six (6)
Temporary Operation. (Form OP-F-46)	49 CFR 1134.6(b) (49 CFR 1003.1)	Five (5)
Transfer or Lease of Certificate of Registration. (Form OP-M 110)	49 CFR 1132.12(b) (49 CFR 1003.1)	Four (4)
Transfer or Lease of Operating Rights or Broker Licenses (Form OP-M 100)	49 CFR 1132.2 (49 CFR 1003.1)	Four (4)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Applications - Water Carrier and Freight Forwarder		Original plus:
Certificate of Exemption - Water Carrier. (Form OP-WC-10)	(49 CFR 1003.2)	One (1)
Exemption by Contract Carriers - by Water. (Form BWC-1)	(49 CFR 1003.2)	One (1)
Extension of Operations. (Form OP-WC-20)	49 CFR 1140.1(b) (49 CFR 1003.3)	One (1)
Freight Forwarder Permit. (Form OP-FF-10)	49 CFR 1150.1 (49 CFR 1003.3)	One (1)
New Certificates and Permits. (Form OP-WC-20)	49 CFR 1140.1(b) (49 CFR 1003.2)	One (1)
Transfer of Water Carrier Certificates and Permits.	49 CFR 1141.6(b)	Four (4)
Transfer of Freight Forwarder Permit	49 CFR 1151.5(b)	Four (4)
Applications - Other		
Fourth Section.	Rule 200	Six (6) Fourteen (14) if Div. 2 matter
Released Rates.	Rule 225(e)	Six (6)
Special Permission.	Rule 225(e)	Six (6)
Section 5a. (Forms OP-F-44 and OP-F-45)	49 CFR 1134.1(b) & 1134.50(b) (49 CFR 1003.1)	Five (5)
Pleadings and other documents.		
Admissions, Requests for.	Rule 63(a)	One (1) (Copy only)
Administrative Appeals, Exemptions, Petitions for Stay.	Rule 101	Six (6)
General Transportation Importance - Petitions	Rules 102 and 103	Fourteen (14)
Employee Board Actions - Petition for Reconsideration.	Rule 225(e)	Six (6)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Suspension and fourth-section matters - Petition for Reconsideration.	Rule 200(j)	Original plus: Six (6), Fourteen (14) if Div. 2 matter
Investigation into discontinuance - Order instituting or decision not to investigate - Petition for Reconsideration.	Rule 245(f) Rule 245(f)(3)	Six (6)
Bankruptcy proceedings - Various pleadings.	Rule 16	Six (6)
Complaints - Formal.	Rule 26(a)	Six (6) copies plus one for each defendant to be served. If State-made rates involved one additional copy for each State concerned
Complaints - Informal - Not Seeking damages.	Rule 24(a)	One (1)
Complaints - Informal - Seeking Damages.	Rule 25(d)	One (1) for each defendant to be served
Complaints - Answers.	Rule 35(c)	Six (6) copies
Complaints - Satisfaction.	Rule 37	None
Depositions.	Rule 64	One (1) plus One (1) copy of exhibits
Exhibits.	Rule 84(c)	One copy; plus one copy for each counsel and each board member.
Interrogatories - Written.	Rule 62(a)	One (1) (Copy only)
Intervention Petitions.	Rule 72(d)	Three (3)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Intervention Petitions - At Oral hearing.	Rule 72	Original plus: One (1) plus one (1) for each party represented. If granted, one (1) for Commission.
Modified Procedure - Verified Statements - In general.	Rule 52	Six (6)
Modified Procedure - Verified Statements - Applications.	Rule 247(e)(3)	One (1)
Prepared Statements - Oral hearing.	Rule 77	Copy for reporter, and one (1) for each counsel
Protests - General.	Rule 40(c)	Six (6)
Protests - Motor Carrier Finance.	Rule 240(c)(1)	One (1)
Protests - Investigation and Suspension Proceedings.	Rule 42(d)	Seven (7)
Protests - Motor Carrier, Broker Water Carrier, Freight Forwarder Applications.	Rule 247(d)(1)	One (1)
Oral Argument Matters.	Rule 98	None
Replies to Pleadings.	Rule 23(c)	Same number as pleading replied to
Subpoena Requests.	Rule 56	None
Time Modification - Requests for Extension.	Rule 21(b)	None
Transcript Correction.	Rule 90(b)	Two (2) for reporter

PROPOSED RULE

APPENDIX G

COMMISSION HEARING AND APPELLATE PROCEDURE

SEC. 303. (a) Section 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended by redesignating paragraphs (9) through (12) thereof as paragraphs (10) through (13) thereof, respectively, and by inserting therein the following new paragraph (9):

"(9) (a) Whenever the term 'hearing' is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

"(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition of any such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

"(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

"(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

"(A) specific findings of fact;

"(B) specific and separate conclusions of law;

"(C) a recommended order; and

"(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

"(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be con-

COMMENT

Proposed Appendix G is provided in line with the provision made therefor in Proposed new Rule 103.

sidered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

"(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order, or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 180 days after the date on which it grants the application for reconsideration.

"(e) The Commission may, in its discretion, extend any time period set forth in this section for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

"(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

"(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

"(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

"(A) a full explanation of the reasons for such further extension;

"(B) the anticipated duration of such further extension;

"(C) the issues involved in the matter before the Commission; and

Commission Hearing And Appellate Procedure

"(D) the names of personnel of the Commission working on such matter.

"(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

"(i) reopen any proceeding;

"(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

"(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

"(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

"(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

"(j) Reports in writing and other written statements (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action, (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.".

(b) Section 17 of the Interstate Commerce Act is amended by inserting therein a new paragraph (14) as follows:

"(14)(a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission